

[From January 18, 2008 City Solicitors/Town Counsel Association Email]

NEW ETHICS REGULATIONS-

The State Ethics Commission recently issued new regulations concerning gifts, benefits, school fees, admission fees, etc. These regulations are available on their website, at 930 CMR 5.00 or below for your convenience. These are very important and you can expect your local officials to be asking about them. They were discussed at the Ethics Program sponsored by the CSTC at the MMA Annual Meeting last week-end.

There are SEC approved disclosure and related forms, which are not yet on their web site. We expect to have a copy of these forms next week and will email them out.

930 CMR 5.00: EXEMPTIONS FROM M.G.L. c. 268A

5.01: Purpose and Scope

M.G.L. c. 268B, § 3(a)(2) authorizes the State Ethics Commission to carry out the purposes of M.G.L. c. 268A by promulgating rules and regulations providing for reasonable exemptions from the provisions of M.G.L. c. 268A, §§ 3 through 7, §§ 11 through 14, §§ 17 through 20, and § 23. 930 CMR 5.00 is intended to establish reasonable exemptions to the provisions of M.G.L. c. 268A. The establishment of such exemptions shall not be the basis for inferring that any conduct, items or other matters not so exempted are prohibited, permitted, restricted or otherwise regulated by M.G.L. c. 268A.

5.02: General Provisions

Authority. 930 CMR 5.00 is promulgated under authority and in conformity with M.G.L. c 268B, § 2 and M.G.L. c. 30A.

5.03: Definitions

Terms defined in M.G.L. c. 268A and c. 268B shall have the same meanings as in 930 CMR 5.00. In addition for purposes of 930 CMR 5.00:

Appointing Authority means the individual official, board, commission or other governmental body that has the legal authority to appoint a state, county or municipal employee or has otherwise been delegated by such appointing authority to act as the appointing authority for purposes of any disclosure filed pursuant to M.G.L. c. 268A and 930 CMR 5.00.

Commission means the State Ethics Commission.

Disclosure means a written statement on a form prescribed by the Commission, or in another writing that otherwise complies with M.G.L. c. 268A and 930 CMR 5.00, of all relevant facts as required by the circumstances and the provisions of 930 CMR 5.00. Disclosures shall be public records for purposes of M.G.L. c. 4, § 7, cl. 26 and shall be filed as follows:

- (a) An appointed public employee shall file a disclosure with his or her appointing authority.
- (b) An elected state or county employee shall file a disclosure with the Commission.
- (c) An elected municipal employee shall file a disclosure with the city or town clerk in his or her respective municipality.

Free or Discounted Admission means a waiver of all or part of the fees for admission to, and food, refreshment, instruction, and materials provided at an annual business or other meeting, seminar, conference or similar event held by a community group or professional, business, civic, charitable, trade or labor organization, but shall not include entertainment and meals that are not an official part of the event and where some, but not all, attendees are invited to participate.

General School Fee means a fee, waiver or exemption established by a school committee for a school service, program or activity including, but not limited to, fees for school bus transportation, preschool or after school programs, sports or extracurricular activities. The term "general school fee" does not include a fee that applies to a single event.

Legitimate Speaking Engagement means giving a speech or serving on a panel where the speech or panel:

- (a) is formally scheduled on the agenda of a meeting or conference;
- (b) is scheduled in advance of the speaker's or panelist's arrival at the meeting or conference;
- (c) is before an organization which would normally have outside speakers or panelists address its members at such event; and
- (d) significantly contributes to the event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive or unique information or viewpoints.

Legitimate Public Purpose means the promotion of tourism, economic development and other activities to promote the interests of the Commonwealth, a county, or a municipality; attendance at training and educational events designed to improve the efficiencies and effectiveness of public services or to enhance the knowledge and skills of public employees relative to their official duties; business travel necessary to make informed purchasing decisions, selections, and inspections; and similar public purposes.

Public Employee means a state, county or municipal employee or a special state, county or municipal employee as defined in M.G.L. c. 268A, § 1.

Substantial Value means a value of \$50 or more. For purposes of determining substantial value, the value of a gift, item, discount or other benefit shall mean the fair market value of the gift, item, discount or other benefit unless the cost or face value is greater.

Example: The face value of a ticket to a sporting event is \$30 but the giver paid \$ 100. The value of the ticket is \$100 and of substantial value.

Example: The face value of a ticket to a concert is \$100 but, due to the scarcity of such tickets, the fair market value is \$500 at the time of the gift. The value of the ticket is \$500 and of substantial value.

Example: The fair market value of meals and entertainment to a charitable event is \$40.00 but the face value or cost of a ticket to the event is \$ 150. The value of the ticket is \$ 150 and of substantial value. If a gift, item, discount or other benefit is given to more than one person, the value to each person shall be the total value of the gift, item, discount or other benefit divided by the number of recipients.

Example: The total cost including tax and tips of dinner for ten people is \$750. Each individual attending the dinner is deemed to have received a \$75 dinner, which is of substantial value. In determining substantial value the Commission shall aggregate gifts, items, discounts or other benefits offered or given to, or received by, a public employee within a calendar year by one person or by an organized group of persons having a common interest in a particular matter or legislation before that public employee. Gifts, items, discounts or other benefits whose valuation cannot be readily ascertained are not eligible for exemption pursuant to 930 CMR 5.04.

5.04: Gifts and Benefits

(1) Gifts and Benefits Not Requiring Disclosure. It shall not be a violation of M.G.L. c. 268A, § 3(a) for an individual to give or offer to give or a violation of M.G.L. c. 268A, § 3(b) or § 23(b)(2) for a public employee to receive a gift or benefit set forth in 930 CMR 5.04(1) provided that such gift or benefit has not

been solicited by the public employee. No disclosure shall be required by M.G.L. c. 268A, § 23(b)(3) or 930 CMR 5.04(1) for any such gift or benefit received by a public employee.

(a) De Minimis Gifts. Anything with a value of less than \$50, other than cash. De minimis gifts include multiple gifts or benefits given or offered to a public employee within a calendar year by one person or by an organized group of persons having a common interest in a particular matter or legislation before that public employee, if the aggregated value is less than \$50;

(b) Inheritance. Anything received by intestate inheritance;

(c) Gifts from Immediate Family and Relatives. Anything received by a public employee from a member of the public employee's immediate family or from a great grandparent, great grandchild, grandparent, grandchild, uncle, aunt, niece, nephew, cousin, step-parent, stepchild of the public employee or of the employee's spouse and given for reasons unrelated to the public employee's official position or duties;

(d) Informational Material. Informational material relevant to a public employee's official functions and intended for use by the public employee in the exercise of official duties or solicited for the purpose of promulgating, administering and enforcing agency regulations, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, electronic, or visual format;

(e) Professional Organization Membership Fees. Reduced or waived membership or other fees offered by a professional organization if the only requirements for membership relate to professional qualifications;

(f) General Discounts. A rebate, discount or promotional item available to the general public or to a class consisting of all public employees from a city or town, county or state on the same terms as offered to the general public;

(g) Display Items for Meritorious Public Service. An item intended for display and given by a civic, charitable, professional, religious, or fraternal organization in recognition of meritorious public service that has no or de minimis resale value. Such items shall include but not be limited to trophies, plaques, bowls, and certificates;

(h) Honoraria. Honoraria not exceeding \$250 for participating in a legitimate speaking engagement provided that:

1. delivering the speech is not part of the public employee's official duties;
2. public resources are not used in the preparation of the speech;
3. public time is not taken for the preparation or delivery of the speech; and
4. neither the sponsor of the address nor the source of the honorarium is a person or entity with whom the public employee has had or reasonably expects to have dealings in his official duties;

(i) Honorary Degrees. An honorary degree from a public or private educational institution given for meritorious public service or achievement provided that the degree does not include a monetary award of substantial value. The public employee who is receiving the degree may also accept meals and entertainment given to him and to guests accompanying the public employee in accordance with the criteria and policies of the educational institution;

(j) Gifts between Employees. Gifts appropriate to the occasion given to a public employee by another public employee at a state, county, or municipal agency in recognition of infrequent and irregularly occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or upon occasions that terminate a professional working relationship, such as retirement, transfer, or resignation;

(k) Ceremonial Functions. Free or discounted admission of substantial value to a widely attended event open to the general public, when the free or discounted admission is provided to the public employee directly by the organization or committee and not through an intermediary who has purchased admission to the event and where the public employee is expected to perform a ceremonial function directly related to his official position.

(2) Gifts and Benefits Requiring Disclosure. It shall not be a violation of M.G.L. c. 268A, § 3(a) for an individual to give, or offer to give, or a violation of M.G.L. c. 268A, § 3(b) or § 23(b)(2) for a public employee to receive a gift or benefit set forth in 930 CMR 5.04(2). It shall not be a violation of M.G.L. c. 268, § 23(b)(3) or 930 CMR 5.04(2) for a public employee to receive any such gift or benefit if the employee makes a disclosure as provided for in 930 CMR 5.04(3).

(a) Awards. Bona fide awards that are given for meritorious public service or achievement as part of a program of recognition provided that the source of the award is not a person or entity with whom the public

employee has had or reasonable expects to have dealings in his official duties. A program of recognition is one under which awards are or will be made on a regular basis or which is or will be funded, wholly or in part, to ensure its continuation on a regular basis and under which selection of award recipients is made pursuant to written standards. The public employee who is receiving the award may also accept meals and entertainment given to him and to other guests accompanying the public employee to the awards ceremony in accordance with the criteria and policies of the awards program.

(b) Loans. A commercially reasonable loan made in the ordinary course of business;

(c) Random Drawings. Rewards and prizes given to competitors or entrants in contests open to the public.

(3) Disclosure.

(a) If any of the gifts, benefits or items listed in 930 CMR 5.04(2) are of substantial value the public employee shall file a written disclosure:

1. upon receipt of the item, if within six months prior to receipt, the donor had a direct interest in the performance of the public employee's official duties; or
2. when the public employee becomes aware that the donor has a direct interest in the performance of the public employee's official duties, if the interest occurs within six months after receipt.

(b) For purposes of 930 CMR 5.04(3), a donor has a direct interest in the performance of the public employee's official duties if the donor, whether a person or an organization:

1. is seeking official action by the employee; or
2. has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(c) The disclosure shall include a description of the gift, benefit or item given, the actual or estimated value, the identity of the donor, the circumstances under which the item is offered or received, and the interest the donor has in the public employee's official duties.

5.05: Free or Discounted Travel and Admissions

(1) Free or Discounted Travel. It shall not be a violation of M.G.L. c. 268A, § 3(a) for an individual to offer, or give, or a violation of M.G.L. c. 268A, § 3(b), § 23(b)(2) or § 23(b)(3) for a public employee to receive, free or discounted travel and lodging expenses, including meals, of substantial value that serve legitimate public purposes provided that:

(a) Disclosure. A public employee, prior to any travel, shall file a full disclosure in writing of the travel and the expenses to be covered.

(b) Appointed Public Employee. An appointed public employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with his or her appointing authority. The appointing authority shall make an advance determination, which shall be filed in the same manner as a disclosure, that the travel serves a legitimate public purpose and that the benefit to the government of the employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for any employee.

(c) Elected Public Employees. An elected state or county employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with the Commission. An elected municipal employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with the city or town clerk in the respective municipality. Such disclosure shall state that the travel serves a legitimate public purpose and that the benefit to the government of the elected public employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for the elected public employee.

(d) Reconciliation Statement. If the actual travel for the event differs from the original proposal by an amount of substantial value, within two weeks of his return, the public employee shall submit a statement of reconciliation stating how and why the actual travel for the event differed from the original proposal. Reconciliation statements shall be filed in the same manner as disclosures.

(2) Legitimate Speaking Engagements. Reimbursement for out-of-pocket travel expenses, including transportation, lodging, meals, and conference fees, to a public employee who participates in a legitimate speaking engagement whose purpose is to provide education to conference participants. The travel expenses may only cover the day or days on which the public employee has participation or presentation responsibilities and the days on which the public employee must travel to the conference and return to the Commonwealth.

(a) Disclosure. A public employee, prior to any travel, shall file a full disclosure in writing of the travel and the expenses to be covered.

(b) Appointed Public Employee. An appointed public employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with his or her appointing authority. The appointing authority shall make an advance determination, which shall be filed in the same manner as a disclosure, that the speech serves a legitimate public purpose and that the benefit to the government of the employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for any employee.

(c) Elected Public Employees. An elected state or county employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with the Commission. An elected municipal employee, prior to any travel, shall file a full disclosure as required by 930 CMR 5.05(l)(a) with the city or town clerk in the respective municipality. Such disclosure shall state that the speech serves a legitimate public purpose and that the benefit to the government of the elected public employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted travel may convey an appearance of special benefit for the elected public employee.

(d) Reconciliation Statement. If the actual travel for the event differs from the original proposal by an amount of substantial value, within two weeks of his return, the public employee shall submit a statement of reconciliation stating how and why the actual travel for the event differed from the original proposal. Reconciliation statements shall be filed in the same manner as disclosures.

(3) Free or Discounted Admission. It shall not be a violation of M.G.L. c. 268 A, § 3 (a) for an individual to offer or give or a violation of M.G.L. c. 268A, § 3(b), § 23(b)(2), or § 23(b)(3) for a public employee to receive, free or discounted admission of substantial value.

(a) Disclosure. A public employee, prior to accepting such an offer of free or discounted admission of substantial value, shall file a full disclosure of the offer.

(b) Appointed Public Employees. An appointed public employee, prior to accepting an offer of free or discounted admission of substantial value, shall file a full disclosure of the offer in writing, with his or her appointing authority. The appointing authority shall make an advance determination,

which shall be filed in the same manner as a disclosure, that the attendance at the event serves a legitimate public purpose and that the benefit to the government of the employee's participation at the event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted admission may convey an appearance of special benefit for any employee.

(c) Elected Public Employees. An elected state or county employee, prior to accepting an offer of free or discounted admission of substantial value, shall file a full disclosure of the offer in writing, with the Commission. An elected municipal employee, prior to accepting an offer of free or discounted admission of substantial value, shall file a full disclosure of the offer in writing, with the city or town clerk in the respective municipality. Such disclosure shall state that the attendance at the event serves a legitimate public purpose and that the benefit to the government of the elected public employee's participation in the travel or event outweighs any non-work related benefit to the employee or the private sponsor taking into account the extent to which such free or discounted admission may convey an appearance of special benefit for the elected public employee.