



Commonwealth of Massachusetts
STATE ETHICS COMMISSION

John W. McCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

CONFIDENTIAL

May 31, 2007

Bruce A. Assad, Esq.
16 Bedford Street, Suite 3A
P.O. Box 1268
Fall River, MA 02722

Dear Mr. Assad:

I am writing in response to your October 10, 2006 letter requesting advice under the state conflict of interest law, G.L. c. 268A on behalf of your client, the Fall River Public Schools ("the School Department"). The issuance to you of this informal opinion, to the degree it concerns them, was consented to in writing on February 1, 2007 by Ralph Olsen ("Olsen") and Omari Walker ("Walker"). I apologize for my delay in providing you with this letter.

Facts

This opinion is based on my understanding of the facts from materials that you provided to me with your October 10th letter, additional materials you provided to me together with your letter of October 13, 2006 and information that you provided to me in our telephone conversation concerning this matter.

As I understand the facts, the following is true.

In August 2006, Fall River Public Schools Superintendent Nicholas A. Fischer, Chief Financial Officer Kathleen Macedo, and B.M.C. Durfee High School Principal Olsen and Vice Principal Walker entered into a letter of agreement with the Community Foundation of Southeastern Massachusetts ("CFSEM"), a private non-profit organization, under which CFSEM would act as fiscal agent for the B.M.C. Durfee High School Education Enrichment Fund ("the Fund") and Olsen and Walker would act as the Fund's fund advisors. CFSEM apparently receives a fee in the amount 1.5% of the Fund's total income for acting as the Fund's fiscal agent and its responsibilities are limited to receiving, holding and disbursing funds for the Fund in its capacity as a 501(c)(3) corporation and to maintaining distinct and accurate records of those receipts and disbursements. Olsen and Walker are not compensated for serving as fund advisors and, as such, are responsible for authorizing all Fund accounting operations, including, without limitation, entries into and disbursements from the separate CFSEM account created for the Fund. At the time of your request, the Fund's sole receipt was a \$55,000 grant from the Boston Foundation. The Fund is, apparently, not a separate non-profit entity but is instead a separate account within CFSEM.



Based upon the information provided as described above,¹ I can give you the following advice.²

Your Question

What conflict of interest law issues are raised by Olsen's and Walker's service as fund advisors for the Fund?

Answer

Assuming that the School Department may lawfully establish the Fund and that the operation of the Fund is an official School Department function for the sole benefit of the School Department, Olsen's and Walker's unpaid service as the Fund's fund advisors will not raise conflict of interest issues.

Discussion

Your conflict of interest law question cannot be fully and finally answered until the School Department ascertains that the establishment and operation of the Fund is a lawful official activity of the School Department. This prerequisite determination is not within the Commission's jurisdiction. Thus, for example, the establishment and operation of the Fund, would, I believe, have to be reconciled with the provisions of G. L. c. 44, § 53A. Neither your August 28, 2006 letter to Superintendent Fischer, nor Department of Education Deputy General Counsel Kristin E. McIntosh's October 10, 2006 letter to the Superintendent answers this threshold question.

Provided, however, that the establishment and operation of the Fund is indeed a lawful official activity of the School Department and that the Fund is an instrumentality of the School Department and not a separate non-profit entity or an instrumentality of CFSEM, Olsen's and Walker's unpaid services as fund advisors would not appear to raise issues under §§ 17,³ 19⁴ and 23⁵ of G. L. c. 268A.⁶ In such case, Olsen's and Walker's

¹ In providing this opinion, I have relied upon the facts as you have stated them and have not made 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."

² 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.

³ Under § 17, a municipal employee generally may not, directly or indirectly, receive compensation from or act as agent or attorney (even if unpaid) for anyone other than the municipality in relation to or in

unpaid fund advisor services could simply be made part of their official duties as, respectively, B.M.C. Durfee High School Principal and Vice Principal and, as fund advisors, they would be acting as municipal employees and agents of the School Department and not as agents or employees of CFSEM.

Conclusion

I hope that this advice is helpful.⁷ You may obtain other educational and reference materials on the Commission's website at www.mass.gov/ethics. Both this letter and your letter requesting advice are confidential by statute. The Commission may not disclose your, your client's or Olsen's and Walker's identities or any other identifying information without your and their prior consent. You and your client are, with the consent of Olsen and Walker, however, free to disclose this advice to anyone you wish, but if you publicly disclose that you have requested or received advice from the Commission, the Commission could make the full text of this letter public without your consent.⁸ Your client is entitled to a formal opinion of the Commission if you feel that one is necessary or desirable. If you have any additional questions or need any further assistance, please do not hesitate to contact me.

Very truly yours,



David A. Wilson
Legal Division Deputy Chief

connection with any particular matter in which the municipality is a party or has a direct and substantial interest.

⁴ Section 19 provides, in relevant part, that a municipal employee may not participate as such in any particular matter in which he, a member of his immediate family, his partner, or a business organization in which he is an officer, employee, director or partner has a financial interest. Section 19 encompasses any financial interest without regard to the size of the interest.

⁵ Section 23(b)(2) provides, in relevant part, that no public employee may use his official position to secure unwarranted privileges or exemptions of substantial value for himself or others. Under § 23(b)(2), the Commission has consistently prohibited public employees from using their titles, public time and public resources to promote a private interest.

⁶ Issues would be raised under these sections, for example, if the Fund itself were a private entity or an instrumentality of a private entity, such as a private non-profit organization.

⁷ Please note that the examples in this opinion are only representative and are not intended to be all-inclusive.

⁸ See G.L. c. 268B, § 3(g); 930 CMR § 3.01(8).