



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700

www.mtclawyers.com

CLIENT ADVISORY: New Conflict of Interest Law Exposure for Fire Chief Payroll and Budget Signoffs

We have recently received a determination from the State Ethics Commission (the “Commission”) that requires department heads, such as FIRE CHIEFS, to file conflicts disclosures before preparing/advising/signing off on payroll bills that contain their own salary and, in certain instances, when preparing/advising/signing off on annual department budgets that contain their own salary. Whether you must file a conflicts disclosure is discussed below.

****While not discussed by the Commission, its determination would also apply when the salary is that of an immediate family member****

****For individual advice please contact us directly****

1. The Conflict of Interest Law Provisions at Issue

- A. **G.L. c. 268A, § 19** prohibits municipal employees from participating in a particular matter in which they or an immediate family member, to their knowledge, has a financial interest.
- i. Municipal employees’ interest in their own compensation – or that of an immediate family member – is a financial interest within the meaning of Section 19. *See Graham v. McGrail*, 370 Mass. 133, 139 (1976).
 - ii. The Conflict of Interest Law defines “participate” as “participat[ing] in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.” G.L. c. 268A, § 1(j).
 - iii. **Section 19(b)(1), however, allows for appointed municipal employees to participate in such matters** so long as they (a) first advise their appointing authority of the nature and circumstances of

the particular matter; (b) fully disclose their financial interest to said official, and (c) **receive in advance a written determination by their appointing authority** that the interest is not so substantial as to be deemed likely to affect the integrity

Millis Office
730 Main Street, Suite 1F
Millis, MA 02054

New Bedford Office
227 Union Street, Suite 606
New Bedford, MA 02740

of the services which the municipality may expect from such employees. This exception is not available for elected municipal employees.

- iv. The Section 19 disclosure form and instructions can be found at:

<https://www.mass.gov/info-details/municipal-employee-disclosure-forms>

- B. **G.L. c. 268A, § 23(b)(3)** prohibits municipal employees from acting in a manner that would cause a reasonable person to think that they would show favor toward someone or that they can be improperly influenced. In other words, there is an appearance of a conflict.

- i. Municipal employees can cure any such appearance by completing and submitting a 23(b)(3) disclosure form, which can be found at:

<https://www.mass.gov/info-details/municipal-employee-disclosure-forms>

2. Fire Chiefs’ Statutory Duty to Sign Off on/Prepare Annual Department Budgets and Department Payroll Bills

- A. Department heads are required to review and sign off on their department payroll bills and other payment warrants for their departments. See G.L. c. 41, §§ 41, 52 and 56.
- B. Department heads are responsible for preparing their annual department budgets. See G.L. c. 41, §§ 59-60.

3. The Commission’s Determination for Fire Chiefs WITH an Employment Agreement

- A. ANNUAL BUDGET SIGNOFF/PARTICIPATION/PREPARATION THAT CONTAINS THEIR OWN SALARY
 - i. If a Fire Chief (1) ***has an employment agreement in place, which is a public record,*** (2) ***submits an annual budget that includes his/her negotiated salary and*** (3) his/her annual salary ***“has been pre-determined by their employment agreement, and they merely plug that pre-determined salary amount into the salaries line item of the department’s budget”***, then **NO CONFLICTS DISCLOSURES ARE REQUIRED.**
 - ii. But if ***“in their own discretion [a Fire Chief] determines their own salary to be included in the annual budget, such as when their salary is not pre-determined by their employment agreement, or they propose an amount for their salary different than the amount in the agreement,”*** then they **MUST COMPLETE AND SUBMIT A SECTION 19(b)(1) DISCLOSURE ONLY.**

B. WEEKLY PAYROLL BILL SIGNOFF/PARTICIPATION/PREPARATION THAT CONTAINS THEIR OWN SALARY

- i. Fire Chiefs **MUST COMPLETE AND SUBMIT A SECTION 19(b)(1) DISCLOSURE ONLY.**

4. The Commission's Determination for Fire Chiefs WITHOUT an Employment Agreement (Salaries fixed by a CBA or wage and compensation schedules)

A. ANNUAL BUDGET SIGNOFF/PARTICIPATION/PREPARATION THAT CONTAINS THEIR OWN SALARY

- i. If "*at the time the [Fire Chief] prepares the department's annual budget their annual salary has been pre-determined by a collective bargaining agreement (CBA) or a wage and compensation plan approved by City Council or Town Meeting, and they merely plug that pre-determined salary amount into the salaries line item of the department's budget, which is then submitted to a finance committee or others...and approved as part of the annual budget,*" then **NO CONFLICTS DISCLOSURES ARE REQUIRED.**

- ii. But if, "*the [Fire Chief] uses any discretion to determine their own salary, such as when their salary is not pre-determined by a CBA, or they somehow propose an amount other than what is in the CBA, or weigh various factors set forth in a wage and compensation plan,*" then he/she **MUST COMPLETE AND SUBMIT A SECTION 19(b)(1) DISCLOSURE ONLY.**

B. WEEKLY PAYROLL BILL SIGNOFF/PARTICIPATION/PREPARATION THAT CONTAINS THEIR OWN SALARY

- i. Fire Chiefs **MUST COMPLETE AND SUBMIT A SECTION 19(b)(1) DISCLOSURE ONLY.**¹

¹ MTC is seeking further clarification from the State Ethics Commission regarding the certification of payroll.