

Shutesbury Volunteers are "Special Municipal Employees"

Conflict of Interest Law and Municipal Employees

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

The conflict of interest law, G.L. c. 268A, covers all municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time. Chapter 268A governs your conduct as a public official or employee. Many aspects of the law are complicated and there are often exemptions to the general rules. You are encouraged to seek legal FREE advice from the state Ethics Commission or your agency's legal counsel regarding how the law would apply to you in a particular situation.

About Special Municipal Employees

Several specific municipal positions are automatically designated as "special" under the law. It is important to note that the municipal position that is designated as having "special" status, not the individual. Therefore, all employees holding the same office or position must have the same classification as "special municipal employees." For instance, one member of a school committee cannot be classified as a "special" unless all members are similarly classified.

Normally, a position is eligible to be designated as a "special municipal employee" position provided that:

- you are not paid; or
- you hold a part-time position which allows you to work at another job during normal working hours; or
- you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

Additionally, "in towns of 10,000 or less, selectmen are automatically considered "special" employees.

The law also allows that other municipal positions in towns with a population of less than 10,000 (which Shutesbury is) can be designated as "special municipal employee" positions by the selectmen. The designation may be made by a formal vote of the board of selectmen at any time. Once a position is designated as having "special" status, it remains a "special municipal employee" position unless and until the classification is rescinded. A list of all the "special municipal employee" positions should be on file at the town or city clerk's office. (This list should also be filed with the Ethics Commission.)

In Shutesbury, You are a Special Municipal Employee

On Jan. 12, 1998, Shutesbury Select Board voted to make volunteers and committee members "special municipal employees" with the following motion:

"the following motion was made, seconded, and unanimously approved. For the purposes of MGL Ch. 268A, sec. 20, to the extent previous designations may no longer be valid or on the record, the Shutesbury Selectboard hereby votes to designate all elected and appointed town officials who are members of town boards, committees and commissions as special municipal employee."

What Does This Mean For Me?

There are two sections of the conflict law (Sections 17 & 20) that apply less restrictively to those part-time or unpaid municipal officials who have been designated as "special municipal employees." All other sections of the conflict law that govern regular municipal employees apply to "special municipal employees" in exactly the same way.

Section 17 - Acting on Behalf of Others

Section 17 generally prohibits municipal employees from representing a private party before municipal boards or departments. It also prohibits municipal employees from acting as agent (or attorney) for a private party in connection with any matter of direct and substantial interest to their city or town. Finally, it prohibits municipal employees from accepting pay or other compensation in connection with any matter of direct and substantial interest to their municipality.

However, if you are a "special municipal employee," you may:

- represent private parties before municipal boards other than your own, provided that you have not officially participated in the matter and the matter is not now (and was not within the past year) within your official responsibility;
- act as agent for private parties in connection with a matter of interest to your city or town, provided that you have not participated in the matters as a municipal official, and that the matter is not (and has not been, during the past year) within your official responsibility;
- receive pay or other compensation in connection with matters involving your city or town, provided that you have not officially participated in the matters and they are not (and have not been, within the past year) within your official responsibility.

Section 20 -- Restrictions on Having an Interest in Contracts with your City or Town

Section 20 generally prohibits municipal employees from having a direct or indirect financial interest in a contract with their city or town. However, there are many exemptions in this section of the law.

However, if you are a "special municipal employee," you have two additional exemptions:

- As a "special municipal employee," you may have a financial interest in a contract with a department which is completely independent of the one where you work, provided that you file a disclosure of your interest in the contract with the city or town clerk (there is no "public notice" or "competitive bid" requirement for this "special municipal employee" exemption).
- As a "special municipal employee", you may even have a financial interest in a contract with your own department (or with a department which has overlapping jurisdiction with your department), provided that you file a disclosure of your interest in the contract with the city or town clerk and the board of selectmen, board of aldermen, town council or city council vote to grant you an exemption to section 20.

Section 20 -- Restrictions on Holding Multiple Municipal Positions

If you are a "special municipal employee", you may hold any number of other "special municipal employee" positions, provided that the positions are with totally independent departments and you file a disclosure of your financial interest in all the positions with the city or town clerk;