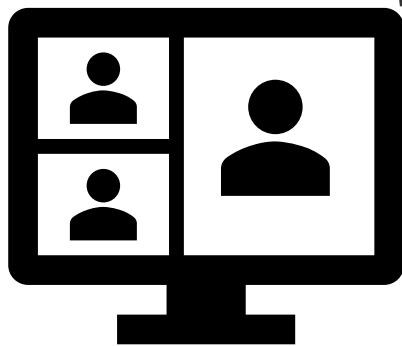




EMPOWERING TOWN BOARD AND COMMITTEES

**Understanding the Basics of Open Meeting,
Public Records & Ethics Law to Empower
your Board or Committee**

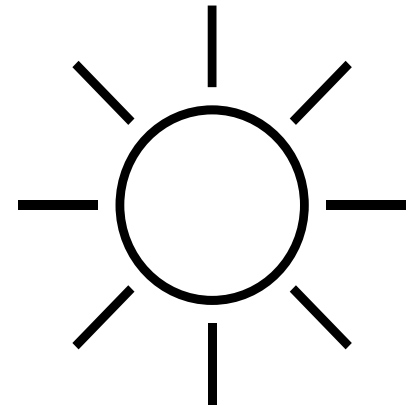


Presented by
Karis L. North
March 12, 2025



WHY? AN EMPOWERED BOARD UNDERSTANDS ITS LEGAL REQUIREMENTS AND CONSTRAINTS

- Why – Sunshine in Government
 - Accessibility, Transparency, Openness
 - Government works best when its in the open
- Why – The Massachusetts Open Meeting Law
 - M.G.L. c. 30A, §§ 18-25
 - 940 CMR 29.00
- Why – The Massachusetts Public Records Law
 - M.G.L. c. 4, § 7(26) and c. 66, §§ 10 and 10A
 - 950 CMR 32.00
- Why – The Massachusetts Ethics Law
 - M.G.L. c. 268A
 - 930 CMR § § 1-7





MURPHY HESSE

TOOMEY & LEHANE LLP

Attorneys at Law

*An Empowered Board or Committee
Runs Efficient Meetings that Provide
Reasonable Public Input*

Who - The General Rule

- “Except as provided in Section 21, **all meetings of a public body** shall be open to the public.”
- “**Public records**” = “**all** books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, **made or received**” by any officer or employee of any public entity, unless specifically exempted.

What - Key Definitions - OML

- Public body: a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose (with certain exceptions).
- Subcommittee: “any multiple-member body created to advise or make recommendations to a public body.”
 - Subcommittee are thus covered and subject to same requirements of the Open Meeting Law as the public bodies that they serve.
 - If two or more people are asked to meet/discuss/ recommend, best practice is to post and comply with the OML.
 - Committees created by Town Administrator/School Superintendent are not subject to the Open Meeting Law BUT must stay within their powers/purview and not make recommendations to a public body.



What is a “Meeting”?

What is a “Deliberation”?

- **Deliberation**: an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.
- **Meeting**: a **deliberation** by a public body with respect to any matter within the body’s jurisdiction.
- A member cannot transmit his or her **opinion** or those of another member on a matter of public business to a quorum of other public body members, even if none of the other members respond.
 - A staff member can send an email to the entire membership of the public body (in those cases, proposed language of an order to be considered).
 - BUT, members of the public body cannot express an opinion via email. **Save it for the meeting.**

What is NOT a “Deliberation”?

- Exceptions to a “deliberation” (whether orally or in writing):
 - Distribution of a meeting agenda;
 - Distribution of scheduling information;
 - Distribution of other procedural information; or
 - Distribution of reports or documents that may be discussed at an upcoming meeting

Provided that no opinion of a member is expressed.

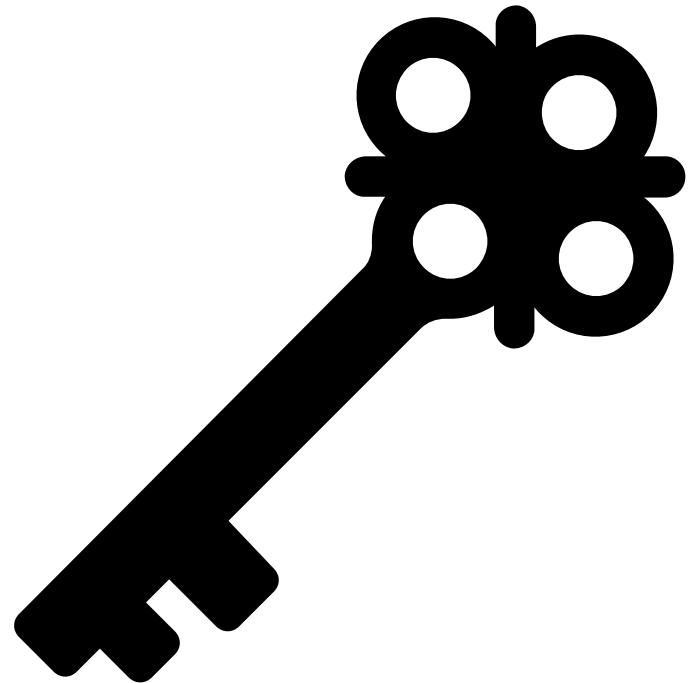
What: Definition of Quorum – Yes, Math IS Required!

- General rule: Quorum is a simple majority – unless otherwise provided in a general law, special law, executive order, or authorizing provision.
 - The public body is generally considered as constituted. This means that quorum is measured by the total number of positions on the body, even if there is a vacancy – unless otherwise provided by law/order/authorizing provision (such as if it states “number of members serving”).
 - 5 Exceptions: (1) on site inspections; (2) at a gathering, conference or training; (3) at the meeting of another public body; (4) quasi-judicial body holding a hearing in an adjudicatory proceeding (ie HAC); (5) Town Meeting.
- **BUT – MAY NOT DELIBERATE**



SUMMARY: What is a Meeting?

- **Meeting = Public Body + Quorum + Deliberation**
 - (If any of these elements are missing, there is no “meeting” as defined by the Open Meeting Law)



When: No Serial Communications

- Members of a public body may only **deliberate with a quorum, in a public meeting.**
 - Members of a public body cannot participate in a series of communications with less than a quorum which when added together result in participation by a quorum on a matter of public business within the jurisdiction of the public body.
- A member cannot gauge, solicit, or poll the opinions of the other public body members on a matter of public business outside of a public meeting.

Deliberation and Social Media

- Members are not restricted from making comments to the general public via social media (subject to Town Social Media policies)
- However, members should use caution!
- Tips for Social Media Posts:
 - Direct comments to members of the public, not directly to another member or the public body
 - Avoid responding to the social media posts of other members
 - Don't direct other members to view social media posts on matters within the body's jurisdiction
 - **If you think you shouldn't, don't!**

What is an “Open Meeting?” (What Do We Have To Do?)

REQUIREMENTS:

Notice

Attendance by Public

Recording/Minutes

Participation by Public

WHEN & WHERE - Notice


- Except in an emergency, in addition to any notice required by law, notice shall be posted at least 48 hours prior to every meeting.
- 48 hours excludes Saturdays, Sundays, and legal holidays.
 - The Attorney General discourages Sunday meetings, although they are not prohibited.
- Notice shall be printed in a legible, easily understandable format AND shall contain:
 - the date, time, place of the meeting; and
 - a listing of topics that the chair reasonably anticipates will be discussed.
- The list of topics (*i.e.*, agenda) “shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.”



WHEN: Emergency! Emergency! Emergency!

- If there is an emergency meeting, notice shall be posted as soon as reasonably possible prior to the meeting.
- If the event required the meeting was anticipated, it is not an emergency.
 - Examples: protecting public safety or health or responding to an incident – unanticipated circumstances requiring an immediate response.

WHO - Attendance and Participation by Public

- Any member of the public has the right to attend Open Session.
 - Exception: Person who continues to disrupt the proceedings after clear warning from the chair. HOWEVER, be careful about cutting off a speaker from the public based on the content of the person's speech.
-  Set basic rules and time limits and enforce them.
 - Do not enter into debate with the public.
- Members of the public do not have the right to participate in a meeting without the permission from the chair.

Meeting in Executive Session

- A public body can meet privately, (in executive session), if it falls within at least 1 of the 10 stated purposes of executive session under Section 21 of the Open Meeting Law.
- The public body can meet in executive session for more than 1 purpose. Each purpose must be separately stated.
- The executive session, the relevant exception, and the case, or other matter should be stated on the agenda. Minutes are required.

Relevant Purposes to Enter Executive Session

- Purpose #1 – Personnel:
 - To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.
 - 48 hours prior to the proposed executive session, unless waived through written agreement of the parties.
 - The session shall be open if the individual so requests.
 - Safeguards for the individual, present, counsel, to speak, independent record.

No Performance Evaluations in Executive Session



Relevant Purposes to Enter Executive Session (cont.)

- Purpose #2:
 - To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- The posted agenda should identify the nonunion personnel, unless there is a reason not to do so.
- Salary negotiations can occur under Purpose #2 only if related to contract negotiations.

Relevant Purposes to Enter Executive Session (cont.)

- Purpose #3 – Strategy Collective Bargaining or Litigation:
 - To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
- The posted agenda should identify the union or the litigation, unless there is a reason not to do so.



Relevant Purposes to Enter Executive Session (cont.)

- Purpose #4 – Security:
 - To discuss the deployment of security personnel or devices, or strategies with respect thereto.
- Purpose #5 – Criminal Matters:
 - To investigate charges of criminal misconduct or to consider the filing of criminal complaints.

Relevant Purposes to Enter Executive Session (cont.)

- Purpose #6 – Real Estate:
 - To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.
 - Cannot use to have general discussions of land use.
 - Generally, body should identify specific property before entering executive session unless doing so would compromise purpose of secrecy.

Relevant Purposes to Enter Executive Session (continued)

- Purpose #7 – Other Laws:
 - To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.
 - Must cite the specific law.

Relevant Purposes to Enter Executive Session (continued)

- Purpose #8 – Preliminary Screening of Applicants:
 - To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this **clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.**

Relevant Purposes to Enter Executive Session (continued)

- Purpose #9 – Mediation.
- Purpose #10 – Energy Trade Secrets.
 - Very specific requirements

Entering into Executive Session

- First, there must be a lawfully convened open session, with proper notice.
- Roll call vote to enter executive session. Majority vote required. Vote of each member must be entered into minutes.
- Before the executive session, “the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called.”

Executive Session Procedures (continued)

- Keep in mind that Purposes #3 (collective bargaining/litigation), #6 (real property), #8 (preliminary screening committee), and #10 (energy trade secrets) require specific declarations.
 - Keep in mind additional disclosures may also be required (i.e. caption of litigation matter, name of union or employee)
- Chair shall publicly announce whether the meeting will reconvene in open session at the conclusion of the executive session.
- Accurate records of the executive session shall be kept.
- Executive Session may include non-board members, usually counsel or staff. May NOT include the person with whom the Board is negotiating, bargaining, or litigating against.



Meeting Minutes

- Minutes must contain:
 - Date, time, and place of the meeting;
 - List of the members present or absent (including members who participated remotely);
 - Summary of discussions on each subject;
 - List of documents and other exhibits “used” at the meeting; and
 - Decisions made and actions taken at each meeting, including a record of all votes.
 - Roll call votes must be recorded by individual vote

Meeting Minutes – Timeliness

- Public bodies must approve meeting minutes in a “timely manner.”
- Public bodies should approve meeting minutes within the next three meetings, or 30 days, whichever occurs latest, to meet the “timely manner” standard, unless a public body can show good cause for further delay.
- This includes executive session minutes, even if they remain confidential (purpose for executive session still remains)
- Documents and other exhibits (e.g., photographs, recordings, maps) used by the public body at an open or executive session are part of the official record of the session. They do not need to be provided in advance of the meeting, but can be.



Remote and Hybrid Meetings Allowed

- Beginning in March 2020, by Executive Order, ALL members can participate remotely.



- All other provisions of the OML and its regulations remain in force. So, process, minutes, exemptions, and other formalities are still required.
- Provisions extended by the Legislature multiple times.
- Currently, authorization to allow fully remote meetings exists until March 30, 2025.
 - Three bills pending to make changes permanent and one bill to provide an additional extension.
 - SD 1850; HD 2683; SD 2185



MURPHY HESSE

TOOMEY & LEHANE LLP

Attorneys at Law

*An Empowered Board or Committee
Understands its Records May be
Public*

What is a Public Record?

- **“Public records”** = **“all** books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, **made or received”** by any officer or employee of any public entity, unless specifically exempted.
- Political subdivisions of the Commonwealth, including, of course, cities, towns, and counties, are within the statutory definition.

WHAT is a Public Record?

- Ignore the Form of the Record -- “other documentary materials or data, **regardless of physical form or characteristics**”
 - All of the following could be considered public records:
 - Texts
 - Tweets
 - Social Media Posts
 - Messaging Applications

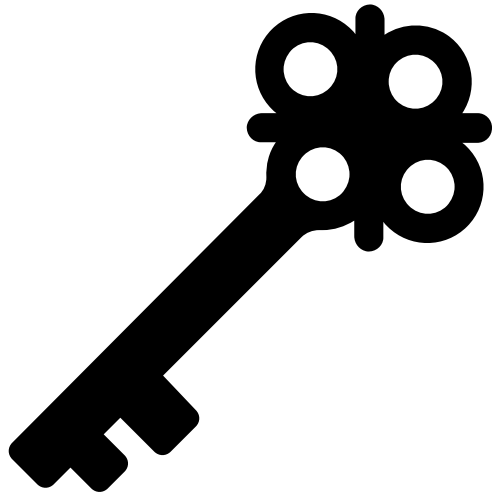
WHERE Do You Find Public Records?

- Ignore the Source or Destination of the Record
 - Public records may be received or sent from each of the following:
 - Work or Personal Computer
 - Smart Phone or Tablet
 - External Storage Device, e.g. USB Flash Drives
 - Personal or Work Email Accounts
 - Third-Party Servers, i.e. the “cloud”

Your Records Are Presumed Public

- In all proceedings under the Public Records Law and regulations, there shall be a presumption that the record sought is public.
- Assume that any document, email, computer file, or other data that is created or utilized in your public position is a public record.
- This includes emails sent via a private email account, if they contain information related to your public position.
- Unless there is a statutory exemption, or another legal protection such as attorney/client privilege, you will likely have to disclose the records in some form.

BEST PRACTICES



- Separate Public/Professional/Private Life
 - Use Town e-mail account for all Town Business
 - If someone contacts you through text or personal e-mail, regarding Town Business, reply that you only correspond about Town Business by means of your Town e-mail account
- Do not conduct Town Business by text, personal e-mail or other social media
 - **DO NOT TEXT DURING PUBLIC MEETINGS**
- Do not delete any e-mail or destroy any record associated with Town Business
 - Note: Whenever a government employee relinquishes his office or terminates his duties, he shall deliver over to his successor all such public records that he is not authorized by law to retain.

Yes, You Have to Respond

- The Purpose of the Request is Not Relevant
 - A records access officer may not require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver
 - One exception – harassment – only found once by the Public Records Division – where there were over 200 request in less than 4 years.

Utilize the Town Website to Make Responses Simple

- Effective July 1, 2017, the RAO of a municipality shall, to the extent feasible, post the following on the website of the municipality:
 - final opinions, decisions, votes and orders;
 - annual reports
 - notices of hearings
- Additional records to be posted on website:
 - winning bids for public contracts
 - awards of federal, state and municipal government grants
 - minutes of open meetings;
 - budgets
 - any public record information of significant interest that the municipality deems appropriate to post

Keep Those Records!

- Records retention schedules help determine lifecycle of government records
 - Cities, Towns, Local Government
 - Use The Municipal Records Retention Manual
 - Call the Records Management Unit at (617) 727-2816 for more information
- OR, call your Town Counsel with questions!



MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

*An Empowered Board or Committee
is Ethical*

WHAT? The Law

- The Conflict of Interest Law is contained in Massachusetts General Laws Chapter 268 and its regulations.
 - Section 1 – Definitions;
 - Sections 17 through 22 – Provisions Specific to Municipal Employees; and
 - Sections 2, 3, 21, 23, 25 to 28 – Applies to All Public Employees (State; County; Municipal).
- Regulations are at 930 CMR.
- There are disclosure forms for certain exemptions.

Application

- Broad scope:
 - Applies to present and former public employees.
 - Applies to public employees during and after work hours, as well as “on the side” employment.

 Purpose: public employees have **undivided loyalty to their public employer** and they must act in the public interest, not for private gain.

What to do with an Ethics Issue?

- Contact State Ethics Commission, which administers and enforces M.G.L. c. 268A and its regulations.
 - Call your Town Counsel (with approval of your Town Manager/Administrator/Mayor)
 - Telephone advice (617-371-9500 – Legal Division Attorney of the Day); and
 - Website guidance (www.mass.gov/ethics).

Am I Covered? (Yes)

- Applies to “municipal employees” – **ANYONE** who performs services for or holds an office, position, employment or membership in a “municipal agency.”
- This includes elected officials and elected board and committee members, whether or not you are compensated for your position.

Who is a “Municipal Employee”?

- Individuals working full-time or part-time;
- Individuals working on a regular, intermittent, or consultant basis;
- Individuals who are elected, appointed, or have a contract of hire or engagement; and
- Individuals who are paid or unpaid (including volunteers).

Bribes/Corrupt Gifts (Section 2)

- No public employee, or a person selected to be such an employee, may directly or indirectly, ask for or receive **ANYTHING OF VALUE** (*i.e.*, **\$0 threshold**) for themselves or for any other person or entity in exchange for:

Bribes/Corrupt Gifts (Section 2 continued)

- Being influenced in the performance of any official act or any act within their official responsibility;
- Being influenced to commit or aid in committing, colluding in, allowing any fraud, or making opportunity for the commission of any fraud, on the Commonwealth or on a public agency; or
- Being induced to do or omit to do any acts in violation of their official duty.

Gifts and Gratuities (Section 3)

- No present/former public employee, or a person selected to be such an employee, otherwise than as provided by law for the proper discharge of official duty, may directly or indirectly, request or receive anything of “substantial value” (*i.e.*, \$50.00 or more):
 - For themselves for or because of any official act or act within their official responsibility performed or to be performed by them; or
 - To influence or attempt to influence them in an official act taken.

Gifts and Gratuities (Section 3 continued)

- Examples of “gifts” and “gratuities”:
 - Honoraria;
 - Free or discounted items or services;
 - Meals;
 - Tickets;
 - Golf and travel expenses; and
 - Items where payment is generally required
- Some of these may qualify for exemptions under regulations.

Gifts and Gratuities (Section 3 continued)

- Exceptions:
 - Ceremonial gifts
 - Gifts provided exclusively because of family or friendship
 - Other situations determined by the State Ethics Commission as not presenting a genuine risk of a conflict or the appearance of a conflict of interest
 - Certain travel, training & free or discounted admissions if disclosed, there is a legitimate public purpose, and benefit to the government outweighs any non-work-related benefit to the employee/sponsor

Gifts and Gratuities (Section 3 continued)

- Food for Thought:
 - Why am I being offered something?
 - What is the value?

Private Activities (Section 17)

- Section 17 prohibits divided loyalties.
- No municipal employee may, other than as provided for the proper discharge of their official duties, directly or indirectly receive or request compensation from anyone other than their municipal employer in connection with any particular matter in which their municipal employer is a party or has a direct and substantial interest. Section 17(a).

Former Employees (Section 18)

- “Forever Ban”: A former municipal employee cannot knowingly act as agent or attorney for, or receive compensation directly or indirectly from anyone other than their former public employer in connection with any particular matter in which their former municipal employer is a party or has a direct and substantial interest, and in which the employee participated as a municipal employee while so employed.

Former Employees (Section 18 continued)

- “Cooling Off” Period: A former municipal employee cannot, within ONE YEAR of the end of the employment, appear personally before any agency of the municipal employer as agent or attorney for anyone other than the municipal employer in connection with any particular matter in which the municipal employer or an agency of the same public employer is a party or has a direct and substantial interest – the particular matter must have been under the former employee’s official responsibility during the last TWO YEARS of public employment.

Former Employees (Section 18 continued)

- Considerations:
 - Were you involved with the matter?
 - Was the matter under your responsibility?
 - When did your public employment end?
- Section 18 also applies to the partner of a former municipal employee.

Financial Interests (Section 19)

- No municipal employee may participate as an employee in any particular matter in which any of the following have a financial interest: (1) the municipal employee; (2) an “immediate family” member; (3) a partner; (4) a business organization in which the public employee serves as officer, director, trustee, partner or employee; or (5) any person or organization with whom the public employee is negotiating or has any arrangement for prospective employment.

Financial Interests (Section 19 continued)

- “Participate” is broadly defined and includes approval, disapproval, decision, recommendation, the rendering of advice, investigation, delegating authority over the matter to a subordinate, supervising, or otherwise – abstaining is the best course of action to follow.
- “Particular matter” is “any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.”

Financial Interests (Section 19 continued)

- “Financial interest” is not defined by statute, but is anything that can be reduced to monetary terms (including real estate), either positively or negatively, regardless of the amount. But it is not something that is speculative.

Financial Interests (Section 19 continued)

- Exemption:
 - If the particular matter involves a determination of general policy and the interest of the municipal employee or members of his/her immediate family are shared with a substantial segment (*i.e.*, 10%) of the population of the municipality.
 - Example: setting the residential tax rate; setting fees for building permits

Financial Interests (Section 19 continued)

- If a Section 19 conflict arises, unless there is an exemption, the municipal employee cannot participate and must recuse himself/herself.
- Examples of prohibited activity:
 - Hiring an “immediate family” member.
 - Participating in the award of a contract to a business owned by an immediate family member or a business with whom the employee is negotiating for a new job.
 - Making a policy decision benefiting oneself.

“Financial Interest” in Certain Contracts (Section 20)

- No municipal employee may have a financial interest, directly or indirectly, in a contract made by a municipal agency of the same municipality, in which the municipality is an interested party.
 - Exception: the financial interest is ownership of less than 1% of the stock of a corporation.
- This applies to:
 - holding multiple municipal offices; and
 - contracting with the municipal employer.

“Financial Interest” in Certain Contracts (Section 20)

- Exemption:
 - Within 30 days of learning of a violation, the municipal employee makes full disclosure to the contracting agency and terminates or disposes of the interest.

“Financial Interest” in Certain Contracts (Section 20)

- Exemption – Section 20(b):
 - (1) The municipal employee is not employed by the contracting agency or an agency regulating the activities of the contracting agency; and
 - (2) The municipal employee does not participate in or have official responsibility for any of the activities of the contracting agency;
 - (3) The contract is made after competitive bidding (if applicable), or otherwise if the contract is made after public notice;

“Financial Interest” in Certain Contracts (Section 20)

- Exemption – Section 20(b) (continued):
 - (4) The employee files a written statement with the municipal clerk making full disclosure of the financial interests; and

Code of Conduct (Section 23)

- No current public employee may:
 - Accept other employment involving compensation of “substantial value”, the duties of which are inherently incompatible with the duties of his/her public employment. Section 23(b)(1).
 - Present a false or fraudulent claim to his/her public employer for any payment or benefit of “substantial value.” Section 23(b)(4).
 - Example: falsely submitting request for sick leave.

Code of Conduct (Section 23 continued)

- No current public employee may use or attempt to use an official position to secure, for themselves or others, unwarranted privileges or exemptions that are of “substantial value” and which are not properly available to similarly situated individuals. Section 23(b)(2)(ii).
 - Examples: attempting to use official position to get out of a speeding ticket; misusing government resources.

Code of Conduct (Section 23 continued)

- “Appearance of Undue Influence”: No public employee may act in a manner that would cause a reasonable person with knowledge of the situation, to conclude that any person can improperly influence or unduly enjoy the public employee’s favor in the performance of his/her official duties, or that the public employee is likely to act or fail to act because of kinship, rank, position, or undue influence of any party or person. Section 23(b)(3).

Code of Conduct (Section 23 continued)

- If there is an “appearance of undue influence”:
 - The “appearance” can be dispelled with a written disclosure of the applicable facts, using the appropriate disclosure form.
 - Alternatively, the public employee can abstain.
- An “appearance of undue influence” may exist even if there is not a prohibition by another section (e.g., if a non-”immediate family” member is involved).

REQUIRED Training

- Within 30 days of starting state employment and on an annual basis, municipal employees must receive a summary of M.G.L. c. 268A and sign a written acknowledgment form, which is filed with the appointing authority.
- Within 30 days of starting municipal employment and every 2 years afterward, every municipal employee must complete an online training program, available at www.mass.gov/ethics.



TIP: Sometimes the public (or your Appointing Authority) ask to see these certificates – Get Your Training Done Promptly.

QUESTIONS?

THANK YOU



MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

Braintree

50 Braintree Hill Office Park
Braintree, MA 02184

Tel: (617) 479-5000
Fax: (617) 479-6469

Boston

75-101 Federal Street
Boston, MA 02210

Springfield

One Monarch Place
1414 Main Street 1310R
Suite 1310R
Springfield, MA 01144