

## Conflict of Interest Law - Hiring or Supervising Family Members Prepared for the January 2024 MMA Business Meeting and Trade Show

The State Ethics Commission (“Commission”) recently issued a determination imposing a monetary fine on a municipal official that had hired two family members on a short-term basis to perform services in her department. In the current matter, a town clerk hired family members as election workers, a not uncommon act of last resort in the absence of sufficient staff coverage for an election. The Commission found, however, that this action violated General Laws Chapter 268A, §19, which statute prohibits a “municipal employee” (including virtually any elected or appointed official, volunteer or employee of a municipality) from participating in any particular matter if it involves a current or reasonably foreseeable financial interest of any size of an “immediate family” member. The term “immediate family member” is defined as the municipal employee, their spouse, and both of their “parents, children, brothers and sisters.” Municipal officials should keep in mind that the Commission interprets §19 strictly and any participation in matters involving the financial interest of family members, whether such interest is positive or negative, may create a violation.

For practical purposes, there is no exemption from §19 for elected officials. The only exception is if the matter being discussed or voted on is one of general policy that affects the interests of the official and their immediate family in the same manner as “a substantial segment of the population of the municipality”. The Commission holds that the term “substantial segment” means at least 20% of the municipality’s population. Available only in these limited circumstances, the exemption clearly would not apply to the hiring or supervising of one’s immediate family member. Elected officials must therefore recuse themselves entirely from any such matter.

For appointed officials, however, the law does create a process to seek approval to participate in such a matter if desired. General Laws c.268A, §19(b)(1) provides that a municipal employee may disclose the prohibited financial interest in a pending matter (such as the hiring or supervising of a family member) to their appointing authority. If such authority is willing to approve the employee’s participation as not likely to impact the integrity of the work performed for the municipality, then the employee may participate without violating the statute. The exemption form states that the appointing authority is authorizing the employee to participate in the matter because the financial interest involved “is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.” Only if this exemption is approved in advance may the municipal employee fully participate in the matter, such as hiring or supervising a family member in a compensated position.

The State Ethics Commission has a detailed advisory on the topic of “nepotism” and §19 available [here](#).

For further information, please contact your KP Law attorney at 617.556.0007 with questions or contact Attorneys Lauren F. Goldberg ([lgoldberg@k-plaw.com](mailto:lgoldberg@k-plaw.com)) or Brian W. Riley ([briley@k-plaw.com](mailto:briley@k-plaw.com)).

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