

Memorandum to Municipal Clients

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A similar issue arises when a municipality seeks to acquire real property owned by a municipal employee through eminent domain. A taking does not constitute a “contract,” but if the employee seeks to resolve the proposed taking by negotiating a purchase price, this is a contractual interest under §20. The new regulations, at Section 6.15, now exempt such a transaction from §20, although all other provisions of Chapter 268A will still apply.

4. Fee-Based Contractual Relationships

Another example of a prohibited §20 contractual relationship, while not an obvious one, is where a municipal employee pays the municipality a fee to enroll in a program or other service – a summer recreation program or a membership in a municipal golf course, for example. The new regulations now exempt such “contracts” from §20, provided that the programs have a set fee (as opposed to a bargained-for cost) and are readily available to the general public at the same fee.

5. Senior Tax Abatement Programs

Many municipalities have adopted programs to allow resident senior citizens to perform temporary work for the city or town in exchange for a reduction in the resident’s property taxes. Since this creates a contractual relationship between the resident and the city or town, the resident is considered a “municipal employee,” and §20 is triggered if the resident holds a municipal office or job or has an interest in another municipal contract. Section 6.17 of the new regulations now provides that a participant in a senior tax abatement program may hold additional municipal positions or have other contractual interests, provided that the employee does not participate in or have official responsibility for administering the tax abatement program.

6. Town Clerks Participating in Elections When on the Ballot

Another long-standing conflict issue that had not been adequately addressed until now concerns when an incumbent elected Town Clerk, serving in a compensated office, performed his or her normal statutory duties in organizing and supervising an annual election when the Clerk’s office is on the ballot. Since the Clerk has a “financial interest” in retaining the office, the State Ethics Commission found that §19 generally prohibited a Clerk from participating in such elections – however, this policy ignored the reality that a City or Town Clerk has sole statutory duties for numerous aspects of the election, with no statutory means of delegating that authority. The same issue arises for appointed City or Town Clerks, in the Ethics Commission’s opinion, when members of their appointing authority appear on the ballot. The State Ethics Commission has now addressed this problem in Section 6.20 of the new regulations. In summary, the Clerk is now authorized to handle all normal election functions when he or she (or the appointing authority) appears on the ballot that “are not likely to be outcome-determinative.” Examples of outcome-determinative functions, which someone else must perform, are (1) checking an adversary’s nomination papers, or the papers of members of the appointing authority and their adversaries, or (2) certifying the names on such nomination papers, or the Clerk’s own papers, and (3) recounts involving the Clerk’s office.