



CITY OF WORCESTER  
LAW DEPARTMENT  
CITY HALL, ROOM 301  
WORCESTER, MASSACHUSETTS 01608

DAVID M. MOORE  
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July 20, 1999

Stephanie S. Lovell  
Executive Director  
State Ethics Commission  
One Ashburton Place  
Boston, MA 02108

Dear Ms. Lovell:

In accordance with 930 CMR 1.03(3), enclosed is a conflict of interest opinion to City Councilor at Large Joseph M. Petty dated July 20, 1999 in response to an oral request by him.

Very truly yours,

David M. Moore,  
City Solicitor

DMM/b

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Whether you are prohibited from acting as a city councilor in this matter depends on whether the highway would affect the value of these properties. Under guidelines promulgated by the State Ethics Commission, an owner of property in the vicinity of a project is presumed to have a financial interest whenever:

- their property abuts the project property;
- their property is within 300 feet of the project property;
- they or their property would suffer an injury related to wetland conditions which is different in kind or magnitude from any injury suffered by the general public; or,
- the project would otherwise alter the value of the property, their rights in the property rights, or the utilization of their property.

*(Don't Vote on Matters Affecting Abutting or Nearby Property, State Ethics Commission Fact Sheet Number Six)..*

With respect to your parent's property, the first three of these criteria do not apply. The last criteria contains three parts concerning the value, rights and utilization of the property. Clearly nothing in the proposed highway project which would affect your parent's use of or rights in their property. There are no quantifiable guidelines for determining whether the highway would have any impact on the value of your parent's property. Absent any actual injury to the property caused by the construction of the highway, your parents could not recover any compensation from the commonwealth. (See G.L. c. 90 §9 and cases decided thereunder). The property is well beyond 300 feet from the project site and no land on any part of Edlin Street would be taken or altered for this highway. It appears that the project would have little, if any, effect on the value of your parent's property.

Therefore, it is my opinion that you do not have a financial interest in your parent's property in relation to the proposed highway project.

One final issue remains. Section 23 of the conflict law imposes additional standards of conduct for municipal employees. Subsection (b)(3) of section 23 makes it unlawful to:

act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude ... that he is likely to act or fail to act as a result of ... kinship ... of any party or person.

While the absence of any financial interest with respect to your parent's property has been addressed under section 19, I still recommend that you make a public disclosure of the fact that your parents live on Edlin Street about 500 feet from Hadwen Park, that you have a conflict of interest opinion from the city solicitor which says that you may lawfully participate in this matter, and that the opinion was (hopefully) approved by the ethics commission

With respect to your sister, I believe a public disclosure is necessary. The use of the word "kinship" (rather than "immediate family") in section 23(b)(3) indicates that the disclosure section covers a range of familial relationships beyond the immediate family. The fact that your



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July 20, 1999

The Honorable Joseph M. Petty  
City Councilor-at-Large  
57 Wildrose Avenue  
Worcester, Massachusetts 01602

Re: Conflict of Interest Opinion

Dear Mr. Petty:

You inquired as to the applicability of the Conflict of Interest Law, G.L. c.268A, to your activities as a city councilor in light of the fact that certain members of your family live in the vicinity of a proposed new state highway.

The proposed state highway would run three and one-half miles from the intersection of Interstate 290 and Hope Avenue to State Route 9. Along the way it would run along the southerly portion of Hadwen Park. The highway is in the very early planning stages. In fact, a public hearing publicly revealing the details of the project for the first time is scheduled for July 26<sup>th</sup>. The highway is being proposed by the Massachusetts Highway Department as a state highway. It would be financed entirely by the state. The land takings would be made by the commonwealth along with the engineering work, environmental permitting, and the award of the construction contracts.

With respect to the members of your family living near the proposed highway, first are your parents, who live at 10 Edlin Street which, according to city assessing maps, is about 500 feet from the southerly boundary of Hadwen Park. Edlin Street runs north and south until about 100 feet from the park boundary where it intersects with Knox Street. From there, Knox Street runs west and roughly parallel to the southerly boundary of the park. There is no access to the park from Edlin Street. Second is your sister's mother-in-law who lives on Grandview Avenue, a street which would be substantially altered by the proposed location of this highway.

Section 19 of the Conflict of Interest Law prohibits your participation in any matter that affects the financial interests of your immediate family, which includes your parents, siblings and children, as well as those of your spouse. The mother of your sister's spouse is not a member of your immediate family and her financial interests are not imputed to you by the conflict law.

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sister's mother-in-law lives virtually in the project zone might lead someone to conclude that you have been unreasonably influenced in taking whatever actions you might on the highway issue. Therefore, in order to lawfully participate in this matter, you must make a disclosure of the fact that your sister's mother-in-law resides on Grandview avenue. You may add to your announcement the facts that you have received this opinion and that it has been approved by the state Ethics Commission.

In accordance with the regulations of the State Ethics Commission, I am forwarding this opinion to the commission for review. The commission will advise us whether or not it concurs with the conclusions stated in this letter.

Very truly yours,

A handwritten signature in black ink that reads "David M. Moore". The signature is written in a cursive style with a large, stylized "D" and "M".

David M. Moore  
City Solicitor