



Commonwealth of Massachusetts STATE ETHICS COMMISSION

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)
Chair

David A. Wilson
Acting Executive Director

November 21, 2016

Jennifer Dopazo Gilbert
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300 Washington St.
Brookline, MA 02445

Dear Ms. Gilbert,

This is in response to your request for advice under the conflict of interest law, G.L. c. 268A, on behalf of the Massport Community Advisory Committee (“CAC”). You ask whether the members of the CAC should be considered to be special state employees for purposes of the conflict of interest law.

In determining whether an advisory committee should be considered to be a public agency subject to the conflict of interest law, the Commission applies the analysis set forth in advisory opinion *EC-COI-95-3*, <http://www.mass.gov/ethics/opinions-and-rulings/advisory-opinions/definitions-268a-section-1/municipal-employee/ec-coi-95-3.html>. That analysis requires consideration of four factors. Applying that analysis here, I make the following observations:

- (1) **Impetus for creation of the entity:** in general, where an advisory body has been created by statute, the Commission has found that it is a government agency subject to the conflict of interest law. Here, the CAC was required to be created by Section 55 of Chapter 46 of the Acts of 2013; so this factor weighs in favor of finding the CAC to be a public agency.
- (2) **Degree of formality associated with the entity:** in general, an entity whose members are selected according to a statutory formula, whose meetings are subject to the Open Meeting Law, and which must observe statutorily mandated record retention procedures will be considered to be a government agency subject to the conflict of interest law. Here, the law that created the CAC specified its membership; CAC is subject to the Open Meeting Law; and the CAC’s bylaws spell out the CAC’s processes. This factor also weighs in favor of finding the CAC to be a public agency.
- (3) **Outside viewpoints:** in general, an entity whose members perform functions or tasks ordinarily expected of public employees will be considered a public agency, while an entity whose members are expected to represent outside private viewpoints will not. Here, the statute creating the CAC suggests that its members are expected to represent the various municipalities that appoint the CAC’s members, and to provide expertise

in specified disciplines (airport operations, environmental affairs, labor relations, public health and port operations). The CAC is tasked with appointing a Massport board member, making budget recommendations, and making recommendations concerning Massport and its programs. These are tasks ordinarily expected of public employees, and this factor therefore also weighs in favor of finding the CAC to be a public agency.

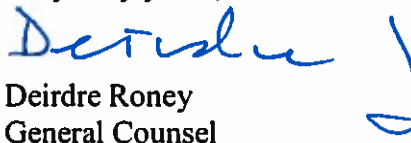
- (4) Formality of work product: where an entity is not required to produce any particular work product, the Commission has found it not to be a public agency, *EC-COI-86-5*. Here, however, the CAC is required to hold hearings and provide recommendations and reports to Massport; this factor also weighs in favor of finding the CAC to be a public agency.

In sum, under the analysis above, the CAC is a public agency subject to the conflict of interest law, G.L. c. 268A. It remains to be determined whether the CAC should be considered a state or a municipal agency for purposes of c. 268A. In determining whether a public agency is a state, county, or municipal agency, the Commission focuses on whether the agency primarily serves the state, county or municipal levels of government. The Commission will also consider which level of government funds and oversees the agency, and whether the agency carries out functions similar to those of a particular level of government. *EC-COI-03-04*, <http://www.mass.gov/ethics/opinions-and-rulings/advisory-opinions/definitions-268a-section-1/municipal-agency/ec-coi-03-04.html>.

Applying this analysis, the CAC's enabling legislation, Section 55 of Chapter 46 of the Acts of 2013, describes an entity that serves the state level of government: the CAC is expected to appoint a Massport board member, and to review and make recommendations concerning Massport's budget, annual report, and programs. Massport funds the CAC. While members of the CAC are appointed by municipalities, the appointing municipalities do not exercise any control over the CAC; rather, the CAC itself appoints its own officers, and, according to its bylaws, is governed by its own Executive Committee. Applying the analysis set forth in *EC-COI-03-04*, I therefore conclude that the CAC is a state agency for purposes of the conflict of interest law. If its members are uncompensated, then they will be considered special state employees for purposes of the conflict of interest law, G.L. c. 268, section 1.

I hope that this advice is helpful. Both this letter and your request for advice are confidential by statute. This means that you are free to disclose this advice to anyone you wish, but that we may not disclose your request or any other identifying information unless you consent, or in the circumstances set forth in 930 CMR 3.01(8). If you have any additional questions or need any further assistance, please do not hesitate to contact me at (617) 371-9509, or deirdre.roney@state.ma.us.

Very truly yours,


Deirdre Roney
General Counsel