

**Commonwealth of Massachusetts**  
**STATE ETHICS COMMISSION**

**John W. McCormack Office Building - One Ashburton Place - Room 619**  
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[www.mass.gov/ethics](http://www.mass.gov/ethics)

October 24, 2013

Stephen P. Crosby  
Chairman, Massachusetts Gaming Commission  
84 State St., 10<sup>th</sup> Floor  
Boston MA 02109

Dear Chairman Crosby,

This is in response to your letter dated October 22, 2013, requesting advice under the conflict of interest law, G.L. c. 268A. As the Chairman of the Massachusetts Gaming Commission you are a state employee subject to that law. In your role as Chairman, you are involved in suitability determinations for applicants for casino licenses; you expect to be involved in evaluating license proposals and making license decisions. On May 18, 2012, you filed a disclosure pursuant to G.L. c. 268A, § 23(b)(3) with your appointing authority, in which you disclosed that Joe O'Donnell, a longtime friend of yours from college, was a participant in a possible proposal at Suffolk Downs. On August 22, 2013, you filed another § 23(b)(3) disclosure with your appointing authority, disclosing that Paul Lohnes, a friend you have known since the 1970s, is part owner of a property that would be purchased by a casino developer if the developer is awarded a license. You state that you are confident that these relationships will not affect your decision-making with respect to the matters before you, and you ask whether there is anything else you should do to be in full compliance with c. 268A.

As you know, the relevant provisions of the conflict of interest law when a public employee must act in a matter in which friends or acquaintances are involved are G.L. c. 268A, § 23(b)(2) and § 23(b)(3). Section 23(b)(2) prohibits the misuse of official position and, among other things, requires that public employees use objective criteria in carrying out their official duties, and ignore any considerations arising from their private relationships. *EC-COI-96-1; EC-COI-95-11; EC-COI-92-36; EC-COI-92-1; EC-COI-86-3*. Approaching any decisions involving Mr. O'Donnell and Mr. Lohnes in an objective, unbiased manner, without allowing your relationships with them to affect your decision-making, is the correct approach under § 23(b)(2).

In addition, § 23(b)(3) of the law prohibits a public employee from engaging in any conduct which gives a reasonable basis for the impression that any person or entity

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can improperly influence or unduly enjoy his favor in the performance of his duties, or that he is likely to act or fail to act as a result of kinship, rank, or position of any person. If there is an appearance of a conflict under § 23(b)(3), the public employee must file a written disclosure in advance to his appointing authority of all the facts and circumstances about the matter and continue to perform his official duties using objective criteria. *EC-COI-96-2, 95-11.*

You have already filed § 23(b)(3) disclosures concerning your relationships with Mr. O'Donnell and Mr. Lohnes with your appointing authority. However, one of these disclosures was filed more than a year ago, and the other several months ago. I recommend that you consider updating the disclosures if any of the facts have changed since your earlier disclosures, and to provide more specific details regarding the upcoming matters involving these individuals. For example, the Gaming Commission may be at a different stage of the process than it was when you filed those disclosures, and, if so, you can identify the specific issue or issues that you anticipate will be before the Gaming Commission. I would also recommend that your disclosures identify the specific proposals or casino developers with which Mr. O'Donnell and Mr. Lohnes are associated. Once you have updated your disclosures, you may perform your duties as Gaming Commission Chairman in the matters in which Mr. O'Donnell and Mr. Lohnes are involved, using objective criteria when you do so, as discussed above.

I hope that this advice is helpful. Both this letter and your request for advice are confidential by statute. This means that you may disclose this advice to anyone you wish, but the Commission will not disclose your request or any other identifying information except 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.

Very truly yours,

Deirdre Roney  
General Counsel