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

DAVID M. MOORE
CITY SOLICITOR

TELEPHONE
(508) 799-1161
FACSIMILE NUMBER
(508) 799-1163

April 5, 2011

David J. Rushford, City Clerk
City of Worcester, Massachusetts

Re: Conflict of Interest Opinion – City Councilor Kate Toomey
Employment at Autumn Village Skilled Nursing and Rehabilitation Center

Dear Mr. Rushford:

Enclosed please find a Conflict of Interest Opinion for City Councilor Kate Toomey along with a response from the State Ethics Commission. Kindly file these documents with the city's official records.

Very truly yours,

Debra Servidio

Debra Servidio

Enc.
cc: Kate Toomey, City Councilor

E-MAIL: law@worcesterma.gov

Commonwealth of Massachusetts
STATE ETHICS COMMISSION
John W. McCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

April 1, 2011

David M. Moore
City Solicitor
City of Worcester Law Department
City Hall, Room 301
Worcester, MA 01608

Re: Kate Toomey

Dear Mr. Moore,

On April 1, 2011, the Ethics Commission received your opinion of March 29, 2011, to Kate Toomey. I have reviewed the opinion pursuant to the Commission's municipal advisory opinion regulation, 930 CMR 1.03(3), and concur with the conclusions you stated.

Very truly yours,

Deirdre Roney
General Counsel

cc: Kate Toomey
Worcester City Clerk

PHONE: 617/371-9500 or 888/485-4766 FAX: 617/723-5851
www.mass.gov/ethics

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March 29, 2011

Kate Toomey
City Councilor At Large
50 Ideal Road
Worcester, Massachusetts 01604

Re: *Conflict of Interest Opinion - Employment at Autumn Village Skilled Nursing and Rehabilitation Center*

Dear Councilor Toomey:

You requested an opinion as to the applicability of the Conflict of Interest Law to your activities as a city councilor in connection with your recent employment as Business Development Manager for Autumn Village Skilled Nursing and Rehabilitation Center, of 25 Oriol Drive, Worcester, a 156-bed skilled nursing facility owned by Village Square LLC of 342 Winter Street, Framingham, Massachusetts ("Village Square").

As Manager Business Development for Autumn Village, your primary duties are "to execute the sub acute rehabilitation marketing plan to generate consistent admissions of appropriate patients" and to "interface with the regional marketing director, administrator, admissions director and external case manager."[1] As a city councilor you are a member of the legislative body of the city of Worcester government. The city charter provides that, unless otherwise provided by law, "all powers of the city shall be vested in the city council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the city by law." Charter § 2-5. Under the Conflict of Interest Law, a city councilor is classified as a "municipal employee." G.L. c.268A, §1(g).

Your request requires analysis under sections 17, 19 and 23 of the Conflict of Interest Law, which is codified as G.L. c.268A, §§ 1 - 3 & 17 - 29.

Section 17. Section 17 of the Conflict Law makes it illegal for you to participate in any capacity other than as a city councilor in any particular matter in which the city has a direct and substantial interest. A "particular matter" is "any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding." G.L. c.268A,

[1] These duties are listed in the job description you provided, a copy of which is attached hereto.

§ 1(k). To "participate" means to "participate in agency action or in a particular matter personally and substantially … through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise." G.L. c.268A, §1(j). "Participate" includes all forms of actions, not just voting on matters that come before the city council, but also debating matters on the floor of the council or any of its committees and engaging in any other conversation, deliberation or communication with other councilors or members of the public concerning a particular topic (except to say that you cannot participate in that conversation, deliberation, etc., because of the provisions of the Conflict of Interest Law).

"Participate" also means to act as an agent on behalf of Village Square. You would act as an agent if you acted with any city department, including the Worcester Public Schools and any city board or commission, on behalf of Village Square as its representative, spokesperson, negotiator or signatory of any of its documents.

The question of acting as an agent might arise in any number of circumstances. The Autumn Village Skilled Nursing and Rehabilitation Center is located within the city of Worcester. It is a substantial health care facility (156 beds) and has an assessed valuation of almost $1.9 million. It could have a variety of dealings with the city of Worcester. Even though interaction with city officials is not part of your job description, the possibility exists that the management of Village Square might ask you, as a sitting city councilor, to intervene in any matter it might have with city hall. Section 17 prohibits you from acting or speaking on behalf of Village Square with any city employee or official on any subject within the business interests of Village Square.[2]

Section 19. Section 19 of the Conflict of Interest Law prohibits you from acting as a city councilor in matters in which you, your immediate family, your employer or any business organization in which you serve as an officer, director, trustee or partner, or any person or organization with which you have any arrangement regarding future employment has a financial interest. G.L. c.268A, §19(a). Section 19 reads in part:

> [A] municipal employee who participates as such an employee in a particular matter in which to his knowledge, he ... has a financial interest, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both. G.L. c.268A, §19(a).

This provision prohibits you from acting as a city councilor in any matter that involves the financial interests of your employer, Village Square.

Section 19 contains an exception, §19(b)(3), which allows participation in matters where a public employee has a financial interest if the issue involves one of "general policy" and the financial interest is "shared with a substantial segment of the population of the [city]." This exception allows you to participate in such matters as the annual setting of the tax

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[2] The basic penalty for violating section 17 is a civil penalty of not more than $10,000. G.L. c. 268B, §4(j)(3).

rates,[3] or setting water and sewer rates or voting on ordinances that apply citywide. Therefore, provided you make the public disclosure described below, you may participate as a city councilor in general policy matters which might affect Autumn Village as a property and business owner in the city.

Section 23. Section 23 imposes additional standards of conduct for municipal employees involving the appearance of improprieties, obtaining unlawful privileges and releasing confidential information.

Appearance of Impropriety. Subsection (b)(3) of section 23 makes it unlawful to act in a manner which would cause a reasonable person to conclude that any person could improperly influence you or obtain improper special treatment from you in the performance of your official duties. This section would apply whenever you might participate in matters such as the annual tax classification vote. This section allows you to participate if you first make a disclosure of the facts which might lead to such a conclusion, namely, the fact that you are employed by Village Square as their Business Development Manager for the Autumn Village Skilled Nursing and Rehabilitation Center. To gain the benefit of this provision you must make such a disclosure "in a manner which is public in nature." The general practice with the city council is to make the disclosure when any appropriate item is taken up by the council. Such a disclosure is made a part of the minutes of the meeting and recorded in the office of the city clerk.[4]

Obtaining Unlawful Privileges. Subsection (b)(2)(ii) of section 23 makes it unlawful to "use or attempt to use [your] official position to secure for ...[anyone]... unwarranted privileges or exemptions which are of substantial value ($50 or more) and which are not properly available to similarly situated individuals.[5] While actions which violate this provision may also violate other provisions of law, an example might be intervening with the city assessor to have a tax abatement application decided sooner rather than later.

Releasing Confidential Information. Lastly, subsection (c)(2) of section 23 makes it unlawful to "improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him

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[3] The phrase "setting of the tax rates" is actually a misnomer. The tax rate is set through the combined actions of the recommendation and approval of the city budget and the approval of estimated receipts by the state department of revenue. The city council acts in the tax classification vote to determine "the percentages of the local tax levy to be borne by each class of real property." G.L. c. 40 §56.

[4] See G.L. c. 268A §24, which provides "all disclosures ... made in accordance with its provisions shall be made in writing and, unless otherwise specifically provided in this chapter, shall be kept open to inspection by the public by the official with whom such disclosure has been filed."

[5] The basic penalty for violating section 23(b)(2)(ii) is a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than $1,000 in any 12 month period.

in the course of his official duties nor use such information to further his personal interest."

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. Once received, this letter and the commission response will be filed with the city clerk as a public record.

Very truly yours,

David M. Moore
City Solicitor

cc: State Ethics Commission

Autumn Village

Skilled Nursing and Rehabilitation Center

Position: Business Development Manager

Location: Worcester, MA

Classification: Exempt

Date Posted: 06/06/03

Primary Duties:

- Executes sub acute rehabilitation marketing plan to generate consistent admissions of appropriate patients.
- This position interfaces with Regional Marketing Director, Administrator, Adminsions Director, and External Case Manager.

Scope of Responsibilities:

- Initiates and completes sales calls to hospitals physicians, case managers, insurance companies, trust officers and ACLF's / Life Care retirement in accordance with the marketing plan at the average rate of 15-20 per week.
- Executes strategies to build alliances with key referral sources.
- Distributes facility information/literature to referral sources.
- Communicates referral sources concerns to Program Director.
- Maintains daily telephone contact with Regional Director of Marketing.
- Attends one facility Admission Committee meeting per week.
- Assists Case Manager with pre-admission data collection if asked to facilitate and immediate referral.
- Arranges and conducts tours of the facility.
- Records sales related data in accordance with HHC Marketing Communication Systems.
- Weekly marketing report
- Monthly business analysis.
- Gathers competitive data.
- Prepares and submits weekly expense reports.
- Attends program and HHC sponsored promotional events.
- Recommends and projects/events to meet the expressed interests of the marketplace.
- Represents HHC at community or referral source sponsored events.
- Attends one support group meeting per month.
- Seeks appointment to at least one committee of a rehabilitation related organization.

- Coordinates advertising media efforts with facility admission director and activities director.
- Conducts weekly marketing meetings at facility.
- Review weekly report.
- Review expenses.
- Review marketplace opportunities.
- Attends at least one weekly admissions meeting per week, one department head meeting per month and one staff meeting per month.
- Serves as a role model to others by maintaining a high standard of professionalism.
- Represent the halophyte of the program and the healthcare profession in all professional contacts and activities.
- Maintains memberships and active participation in managed care and rehabilitation related organizations.
- Encourages interdisciplary staff participation in professional rehabilitation organizations.
- Demonstrates skill in verbal, nonverbal, and written communication.
- Participate in continuing education for self-growth in rehabilitation and managed care.

Qualifications and Skills:

1.) Minimum of Associates Degree in nursing, social work or marketing.
2.) Prior experience in Case Management or Medical Service Sales.
3.) Experience or ability to learn third party payor mechanisms.
4.) Ability to plan, organize and document sales plans and educate other team members to it.
5.) C.C.M., C.R.R.N. or C.I.R.S. desirable

Physical and Sensory Requirements:
(With or Without the Aid of Mechanical Devices)

1.) Ability to read, and write in English.
2.) Ability to communicate with residents, families, personnel and support agencies.
3.) Ability to understand and interpret financial data.
4.) Ability to understand and follow written and oral instructions and directions.
5.) Walking, sitting, and standing.
6.) Ability to evaluate and interpret information and make independent decisions.
7.) Ability to remain calm under stress.
8.) Ability to understand and instruct personnel concerning training and education.

Positions Reports to: **Regional Director of Marketing**