

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 15-0001

IN THE MATTER

OF

ROBERT NICHOLS

ORDER TO SHOW CAUSE

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On June 28, 2013, the Commission found reasonable cause to believe that Robert Nichols ("Nichols") violated G.L. c. 268A, §§ 19, 20 and 23(b)(2)(ii), and authorized the initiation of adjudicatory proceedings.

FACTS

3. During the relevant period, Robert Nichols, a resident of the Town of Blandford ("Town"), was Chairman of the Board of Selectmen ("BOS").

4. In his private capacity, Nichols owned and operated Nichols International, LLC d/b/a Berkshire Consulting ("Berkshire Consulting").

5. In August 2011, Hurricane Irene caused severe damage in the Town, including the destruction of a culvert and road damage on Hiram Blair Road.

6. The BOS, with Nichols participating, decided to replace the culvert and repair the road (the "Project").

7. Nichols misrepresented to the BOS that the Town's engineering

consultant, Tighe & Bond, was unavailable to prepare the Project bid specifications.

Nichols then offered the services of Berkshire Consulting, which he falsely characterized as his "former employer," to prepare the bid specifications for the Project.

8. Between August 2011 and November 2011, Nichols, in his capacity as BOS Chairman, hired Berkshire Consulting to draft the Town's bid specifications, and to perform other Project-related services. This hiring arrangement was a contract between the Town and Berkshire Consulting (the "Contract").

9. Nichols personally drafted the Town's bid specifications for the Project.

10. Nichols actively concealed his ownership of, and/or employment relationship with, Berkshire Consulting from the other selectman¹ by identifying Berkshire Consulting as his former employer based in New York City, when, in fact, Nichols was the current owner and/or employee of Berkshire Consulting.

11. By invoice dated November 19, 2011, Berkshire Consulting issued a \$12,150.50 invoice to the Town for Project-related services.

12. In his capacity as a selectman, Nichols approved payment to Berkshire Consulting in the amount of \$12,150.50.

13. The Town issued a \$12,150.50 check dated November 21, 2011, to Berkshire Consulting.

14. On November 22, 2011, Nichols deposited the check into a Berkshire Consulting bank account, to which he and his wife were the only signatories.

¹ The third seat on the BOS was vacant.

LAW

Section 19

15. Except as otherwise permitted, § 19 of G.L. c. 268A, in relevant part, prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or a business organization in which he is serving as officer, director, trustee, partner or employee, has a financial interest.

16. As Chairman of the BOS, Nichols was a “municipal employee” as that term is defined in G.L. c. 268A, § 1(g).

17. The Contract between Berkshire Consulting and the Town regarding the Project was a particular matter.

18. Nichols participated in the Contract in his capacity as a selectman by hiring Berkshire Consulting.

19. Nichols also participated in the Contract in his capacity as a selectman by approving the \$12,150.50 payment to Berkshire Consulting.

20. Nichols had a financial interest in the Contract because he owned Berkshire Consulting.

21. Berkshire Consulting had a financial interest in the Contract because it was hired to draft the bid documents for the Project for compensation.

22. At the time of his participation, Nichols knew he and/or his employer had a financial interest in the Contract.

23. Accordingly, Nichols violated § 19 by, in his capacity as a selectman,

hiring and approving payment to Berkshire Consulting, a company he owned and/or for which he worked.

Section 20

24. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same town, in which the town is an interested party of which financial interest he has knowledge or has reason to know.

25. As owner and/or employee of Berkshire Consulting, Nichols had a financial interest in the Contract and had knowledge of that financial interest.

26. The Contract was made by the BOS, a municipal agency of the town, and the Town was an interested party in the Contract.

27. Therefore, Nichols violated § 20 by having a financial interest in the Contract, which was made by the BOS and in which the Town was an interested party, and by having knowledge of that financial interest.

Section 23(b)(2)(ii)

28. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions, which are of substantial value and which are not properly available to similarly situated individuals.

29. The opportunity to receive compensation under the Contract was a privilege.

30. The privilege was unwarranted because Nichols obtained it through concealment and deception. At the time he acted as a selectman in hiring Berkshire

Consulting, Nichols concealed his ownership of the company and misrepresented the ability of the Town's engineering consultant, Tighe & Bond, to draft the Project specifications in a timely manner.

31. This privilege was of substantial value because Nichols obtained \$12,150.50 pursuant to the Contract.

32. This privilege was not properly available to similarly situated individuals because Nichols obtained it by deceit.

33. By using his selectman's position as described above to hire Berkshire Consulting, Nichols used his official position to secure this unwarranted privilege for himself and/or Berkshire Consulting.

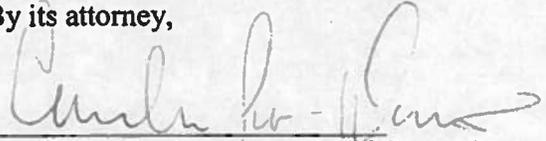
34. Therefore, Nichols violated § 23(b)(2)(ii) by using his selectman's position to deceitfully secure \$12,150.50 in compensation under the Contract, an unwarranted privilege of substantial value that was not properly available to similarly situated individuals.

WHEREFORE, Petitioner asks that the Commission:

- 1. Find that Robert Nichols violated G.L. c. 268A, §§ 19, 20 and 23(b)(2)(ii); and**
- 2. Levy such fines, issue such orders and grant such other relief as may be appropriate.**

Respectfully Submitted,

**Petitioner State Ethics Commission
By its attorney,**



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Dated: February 3, 2015