

# **Kelleher, Michael, Docket No. 683**

**Docket No. 683**

## **In the Matter of Michael Kelleher**

Date: June 25, 2003

### **Disposition Agreement**

This Disposition Agreement is entered into between the State Ethics Commission and Michael Kelleher pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, section 4(j).

On June 11, 2002, the Commission initiated, pursuant to G.L. c. 268B, section 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kelleher. The Commission has concluded its inquiry and, on March 12, 2003, found reasonable cause to believe that Kelleher violated G.L. c. 268A, section 23(b)(2).

The Commission and Kelleher now agree to the following findings of fact and conclusions of law:

### **Findings of Fact**

1. Kelleher has been a Saugus selectman since 1999. The selectmen appoint the town manager.
2. Steven Angelo ("the Town Manager") was the Saugus town manager from July 1998 to August 2002. Kelleher and Angelo are friends.
3. Edward Felix ("the Chief") has been the Saugus police chief since 1996. The town manager appoints the chief.
4. On the evening of January 3, 2002, Kelleher, the Town Manager and others socialized at a Saugus restaurant beginning at around 9 P.M. Later in the evening, the parties went to a Saugus club where they stayed until just before midnight.
5. At that time, the Town Manager went home. Kelleher drove to another Saugus club.
6. Kelleher drank alcoholic beverages at each of the above establishments.

7. At approximately 1:45 A.M., Kelleher left the club and drove towards his home.
8. At approximately 2:00 A.M., two Saugus police officers on patrol observed Kelleher's car drift over the center line and then back to his side of the road. They pulled the car over.
9. After being pulled over, Kelleher used his cell phone to call the Town Manager to inform him that the police had stopped him.
10. The police officers promptly approached Kelleher's car and informed him of the reason for the stop. When the officers observed Kelleher close up, his voice was slurred, his eyes were red, and he and his vehicle smelled of alcohol. The officers suspected the selectman was intoxicated. The officers asked Kelleher if he had been drinking, to which Kelleher responded that he drank a couple of beers. Based on their observations, the officers intended to perform a field sobriety test on Kelleher, which was standard police procedure.
11. The officers requested Kelleher's driver's license. His license, which he gave them, had been expired for over a year. In accordance with standard operating procedures, the officers returned to the cruiser and called in the information.
12. According to Kelleher, he called the Town Manager because he was concerned that he, Kelleher, was being or was about to be harassed by the police because he had supported the Town Manager in a long-standing bitter contract negotiation with the police union.
13. According to the Town Manager, Kelleher told the Town Manager that he did not believe he had been legitimately stopped. The Town Manager advised Kelleher to contact the Chief. Kelleher stated that he did not have the Chief's telephone number and asked the Town Manager to call the Chief instead. The Town Manager agreed.
14. The Town Manager then called the Chief at home. According to the Town Manager, he told the Chief that Kelleher had been stopped by the police and was concerned he was being harassed. The Town Manager asked the Chief to call the selectman in his car at the scene. According to the Town Manager and the Chief, all the Town Manager did was ask the Chief to check into the matter. The Chief told the Town Manager he would call him back to report on what happened.
15. The Chief telephoned Kelleher at the scene and spoke with him briefly. The Chief then telephoned the lieutenant on duty at the station and instructed the lieutenant to have the officers drive the selectman home. The Chief was aware when he gave this instruction that Kelleher had been drinking and may have been driving under the influence and had given the officers a license that had expired over a year ago. The lieutenant called the officers at the scene and conveyed the Chief's message to drive Kelleher home, but also said that he would support the officers if they decided to arrest the selectman.
16. After his call to the station, the Chief had an additional telephone conversation with Kelleher. The Chief then spoke to the officers. They informed him that, in their opinion, Kelleher had been driving under the influence and should be given a field sobriety test. Nevertheless, the Chief asked them to simply drive Kelleher home.

17. At that point the two patrol officers drove Kelleher home.

18. The Chief then telephoned the Town Manager and told him that the officers drove Kelleher home.

19. The two patrol officers and sergeant at the scene believed that Kelleher was intoxicated and, but for the Chief's intervention, a field sobriety test would have been administered per standard operating procedure. They also believed the selectman would have been arrested for operating a motor vehicle under the influence of alcohol ("OUI"). According to standard police procedures, Kelleher also would have been issued citations for not staying within his own lane and driving with an expired license.

20. Citations for failing to stay within one's own lane and driving with an expired license carry \$100 and \$50 fines, respectively. The potential costs of a first-time OUI conviction include \$575 in court fines and costs, loss of license for 45 days and significant insurance surcharges.

## **Conclusions of Law**

21. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

22. As a selectman, Kelleher is a municipal employee as that term is defined in G.L. c. 268A, section 1.

23. Being driven home without taking a field sobriety test that may have led to an arrest, and, not receiving citations for driving over the center line and driving with an expired license were unwarranted privileges or exemptions for Kelleher. Standard operating procedure would have required that Kelleher be subjected to a field sobriety test, which, in the opinions of the officers on the scene, would have resulted in his arrest. He also should have been cited for not staying in his own lane and driving with an expired license.

24. These privileges or exemptions were of substantial value as each involved fines of \$50 or more. Avoiding a field sobriety test that may have resulted in an OUI arrest was of substantial value because the likely costs were significant, including large fines and court costs, loss of license for 45 days and significant insurance surcharges. These unwarranted privileges or exemptions were not otherwise properly available to similarly situated people.

25. Kelleher used his official position as selectman to secure these unwarranted privileges or exemptions. Knowing or having reason to know that he was facing citations for crossing the center line, driving with a license that had been expired for over a year and that he had been drinking and would be subject to a field sobriety test and the possibility of an OUI arrest, Kelleher called his subordinate, arranged to have the Chief awoken at 2 A.M. by the Chief's appointing authority and have him intervene in the situation. In addition, Kelleher used his position to speak directly with the Chief from the scene about the situation. Kelleher knew or had reason to know that the Chief would promptly be advised of the

situation including the expired license and the suspicion of operating under the influence. Accordingly, Kelleher knew or had reason to know that his arranging to have the Chief intervene would send the clear implicit message that he wanted preferential treatment because of his selectman's position.

26. Therefore, by knowingly or with reason to know using his position as selectman to secure for himself these unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals, Kelleher violated section 23(b)(2).

## **Resolution**

In view of the foregoing violation of G.L. c. 268A by Kelleher, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kelleher:

(1) that Kelleher pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, section 23(b)(2); and <sup>1</sup>

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

By:

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Peter Sturges, Executive Director

Dated: June 25, 2003

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Michael Kelleher

Dated: June 10, 2003

I, Michael Kelleher, have personally read the above Disposition Agreement. I understand that it is a public document and that by signing it, I will have agreed to all of the terms and conditions therein including payment of \$2,000 to the State Ethics Commission.

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Michael Kelleher

Dated: June 10, 2003

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[1] In connection with this same matter, Police Chief Felix has also entered into a disposition agreement and former Town Manager Angelo has agreed to a public education letter.