



Conflicts of Interest

Today's Presenters



Stephen Buckley
Legal Services Counsel



Jonathan Cowal
Municipal Services Counsel

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Session Q&A Chat Community

Today 2:46 PM

Ashley, Methot

The chat function is used to say hello to fellow attendees, it is also where you can post any questions you have for technical support. Example you need help with your audio, etc.

Right to Know Law Virtual Workshop for Law Enforcement

If Not Exempt, Disclose

- ▶ Right to inspect, copy, and make notes of records
- ▶ → Electronic Records, RSA 91-A:4, V
- ▶ Records should be available on regular business premises during regular business hours
- ▶ Record must be reasonably described
- ▶ There is no obligation to compile, cross reference or assemble records
- ▶ Motive is irrelevant

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Session Q&A

Chat

Community

Questions Filter by Sort by



0 Votes

10/19/2020, 2:48 PM • Ashley Methot

The Session Q&A is where you ask/post any questions for the speaker(s), or any questions relating to the presentation. This is NOT the place for any technical support questions.

0 replies

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It All Begins with “Ethics”

“Ethics” are hard to pin down and mean different things to different people, but generally:

- Avoiding conflicts of interest
- Disclosing financial interests
- Respecting confidentiality
- Not abusing authority
- Treating people fairly and equally
- Honesty, integrity, and trustworthiness
- Avoiding the appearance of impropriety

Ethics in Public Service

- Public interest, not private gain
- Objectivity and fairness
- Honesty
- Respect for public assets
- Public office/Public trust
- Code of Ethics

Criminal Laws

RSA Chapter 640 (Corrupt Practices) prohibits all state and local public officers or employees from offering, accepting, or failing to report bribery, or engaging in improper influence (threatening harm to a person to influence someone's actions). These offenses are Class B felonies.

RSA 643 (Abuse of Office) prohibits two actions which are both misdemeanors. The first is "official oppression," defined as knowingly committing an unauthorized act or failing to carry out a duty, while purporting to be acting officially, with the purpose of benefitting oneself or others. The second is the "misuse of information," which is speculation, acquisition, or sale of property with inside knowledge obtained by virtue of public office (the governmental equivalent of "insider trading").

NH State Ethics Laws*

- **RSA 21-G:22 Conflict of Interest**
- **RSA 21-G:23 Misuse of Position.**
- **RSA 21-G:26-a Nepotism**

****Applicable only to NH State Executive branch officials & classified employees***





**PERSONAL
INTEREST IN
BUSINESS
TRANSACTIONS
WITH PUBLIC**

95:1 Public Officials Barred From Certain Private Dealings. - No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property of a value in excess of \$200 at any one sale to or from the state or political subdivision under which he holds his public office.

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

Local Conflicts of Interest Ordinances – RSA 31:39-a

- Adopted by legislative body (town meeting/city council).
- Regulate conflicts of interest for officers (elected or appointed) & employees.
- May require financial disclosures by officers and employees.
- May enact more stringent incompatibility standards.
- May provide for conditions that warrant removal from office with the Superior Court having sole jurisdiction over the removal process.

Incompatibility

Whether the person can hold a particular office in the first place:

- 669:7 (general)
- 673:7 (land use boards)
- 32:15 (budget committee members)
- Common law: positions may be incompatible even if not stated in a statute—whenever two positions bear a special relationship to each other, one being subordinate to and interfering with the other, with inconsistent loyalties or responsibilities, then one person cannot legally hold both positions. *Cotton v. Phillips*, 56 N.H. 220 (1875).

Land Use Specific Statute

- **RSA 673:14, I Disqualification of Member.**
- **No member of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, historic district commission, agricultural commission, or housing commission shall participate in deciding or shall sit upon the hearing of any question which the board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.**

Juror Disqualification Standard: RSA 500-A:12

A juror is disqualified if the juror is “not indifferent” because he or she:

- Expects to gain or lose upon the disposition of the case;
- Is related to either party;
- Has advised or assisted either party;
- Has directly or indirectly given his opinion or has formed an opinion;
- Is employed by or employs any party in the case;
- Is prejudiced to any degree regarding the case; or
- Employs any of the counsel appearing in the case in any action then pending in the court.

When Do Conflicts of Interest Arise?

- A conflict of interest exists if “an official has a direct interest in the outcome of a proceeding, see *State ex rel. Thomson v. State Bd. of Parole*, 115 N.H. 414, 422, 342 A.2d 634, 639 (1975), or any “conne[ct]ion with the parties in interest, as would be likely, improperly, to influence [his or her] judgment,” *New Hampshire Milk Dealers' Ass'n v. Milk Control Board*, 107 N.H. 335, 338, 222 A.2d 194, 198 (1966) (quotation omitted). *Appeal of City of Keene*, 141 N.H. 797, 801, 693 A.2d 412, 415 (1997).
- The direct interest is:
 - personal or financial.
 - immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative.
- The idea is that one person cannot serve two masters at the same time.

Areas That Tend to Present Conflicts:

- Prejudgment. An abutter to land that is the subject of an application before a land use board.
- Employment relationship, which is connected to the financial interest in the outcome. Just like the financial interest, the employment relationship must create an immediate/definite conflict. The mere existence of the employment relationship is not going to be sufficient.
- Family relationships: Not necessarily a conflict. *Webster v. Candia*, 146 N.H. 430 (2001).



Difference Between Legislative vs. Quasi-Judicial

Legislative

- Widely felt
- Policy decisions
- Must act in public's interest, but don't need to be "indifferent"

Quasi-Judicial

- Affect rights of specific petitioner
- Notify & hear parties
- Weigh evidence
- Must be indifferent

What if the Official Participates Anyway?

Whether an official is disqualified, and what the consequences of a disqualified member's participation are depends on whether the decision was legislative or quasi-judicial.

Courts resolve "conflict of interest" disputes by examining the type of action taken + the facts.

"Legislative" decisions

"Quasi-Judicial" decisions

Court will only invalidate the action if the person with the conflict cast the deciding vote.

Court will automatically invalidate the decision and remand the decision to the board with instructions to begin again, without the disqualified person.

Recusal vs. Abstaining



Recuse: Immediately remove from discussion and voting



Abstain: does not vote



Recusing is the remedy for avoiding conflict, not abstaining

Avoiding Conflicts

Advisory Vote – RSA 673:14, II.

Recuse (yes) vs. Abstain (no)

Avoid Social Media Opinions on
Pending Matters

Disclose and Remove Yourself

Err on the Side of Caution!

Case Study: Winslow v. Holderness Planning Board (1984)

- Abutter appeal of a PB subdivision approval (with waivers granted)
- Resident (at the time) spoke in favor of the application and subsequently became a member of the board who voted in favor of the proposal (6-1 vote)
- Superior Court reversed PB decision & applicant appealed
- Supreme Court affirmed the lower court:
 - Proper to disqualify PB member as evidence showed he was not indifferent
 - Mere participation by a single DQ'd member can invalidate a board's decision
- Quasi-judicial vs. administrative / legislative discussion

Case Study: Z-1 Express v. Manchester (2019)

- CUP application before planning board.
- After the public hearing portion, but before deliberations, two members voiced opposition to the project on a social media site established by residents opposing the project.
- One of the members who voiced opposition on social media was asked to recuse himself, he refused and he later voted to deny the application.
- Superior Court remanded the case after finding that the member's failure to enter into and participate in deliberations with an open mind "threaten[ed] the integrity of the deliberative process" undermining public trust in the overall function of the planning board.

NHMA's Legal Advisory Services

Open 8:30 a.m. – 4:30 p.m.

- Email: legalinquiries@nhmunicipal.org
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents
- Not drafting individualized ordinances or charters
- Not reviewing specific applications before local boards
- Not settle intra-municipal disputes

Goal: Response w/in 48 hours



*for attending our annual
Conflicts of Interest
workshop!*

Mission Statement

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25 Triangle Park Drive
Concord, NH 03301
www.nhmunicipal.org or
legalinquiries@nhmunicipal.org
603.224.7447