Town of Amherst

Conflict of Interest Policy

Effective Date: July 12, 2004

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Section 1: Purpose

To establish a Conflict of Interest Policy applicable to all officials of the Town of Amherst, whether elected or appointed, full time or part time, paid or volunteer, and to ensure consistency in the application of policy between the various Board, Commissions, and various other official activity of the Town of Amherst.

This policy shall be known as the "Town of Amherst Conflict of Interest Policy" and may be cited as such.

Section 2: Definitions

As used in this policy, the following terms shall have the meanings indicated:

Board: Any board, committee, or commission, permanent or special, appointed or elected.

Conflict of Interest: A situation, circumstance, or financial interest that has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty. [1]

Employee: A person who is paid by the Town of Amherst for his/her services, but who is not an independent contractor.

Family: Any person who is related to the public servant in one of the following ways: spouse, domestic partner, parent, grandparent, child, grandchild, sibling, or similar relation to the individual's spouse. This includes all persons who are members of the same household as the public servant in question, regardless of whether they are related by blood or marriage.

Firm: A sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local or economic development corporation or other similar entity.

Incompatibility of Offices: Offices that may not be held simultaneously as outlined in RSA 669:7 (Appendix D).

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[1] '... The common law of New Hampshire identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a direct personal and pecuniary interest. ...'. Marsh v Hanover 113 NH 667 (1973)

Moreover, the interest must be

'... immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it. ...' (See Atherton v Concord 109 NH 164, (1968).

Interest: Any legal or equitable right, share, or claim, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, including but without limitation, a right, share or claim to land.

Pecuniary: Any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

Principals: Those people who are the subject of the action or application that is before the board.

Public Servant: All officials, officers and employees of the Town, whether elected, appointed, paid or unpaid. A person is considered a public servant upon her or his election, appointment or other designation as such, although s/he may not yet officially occupy that position.

Quasi-judicial Action: Any action where the board or committee members are acting like a judge or a jury. For example, when a board or committee has a duty to notify the potential parties, hear the parties, and can only decide on the matter after weighing and considering such evidence and arguments as the parties choose to lay before the board, the members are involved in a quasi-judicial action. The work of the planning and zoning boards is largely quasi-judicial.

Recuse: Removing or excusing oneself from participating in a specific action or discussion due to a conflict of interest. Recusal means to remove oneself completely from all further participation as a public servant in the matter in question.

Resident: A resident of the Town of Amherst.

Town: The Town of Amherst, including all of its departments, boards, commissions, and committees.

Section 3: Conflicts of Interest

A. Public servants should avoid conflicts of interest or the appearance of a conflict of interest.

1. Public servants shall not appear on behalf of a client or friend, before any governmental body of which the public servant is a member except as provided below in Section 4-1.

2. Public servants shall not participate in any matter in which s/he, or a member of her or his family, have a personal or pecuniary interest that may directly or indirectly affect or influence the performance of her or his duties. In such instances, the public servant shall recuse herself or himself from discussion and decision-making.

3. No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

4. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

5. No public servant shall give opinion evidence as a paid expert in any civil litigation brought by or against the Town. This section is not intended to preclude any board member or public servant from giving testimony in a case involving that board member or public servant's official testimony as a board member or public servant.

6. No public servant shall,

   a) Coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities,

   b) Request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities, nor is anything contained herein intended to prevent any public servant from exercising his/her right(s) to participate in the political process as they choose.

   c) Misuse his or her official authority or influence for the purpose of interfering with or affecting the result of an election;

   d) Directly or indirectly coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or,

   e) Hold two offices that are statutorily **incompatible** with one another. (RSA 669:7 see Appendix D.)

7. No public servant shall receive compensation except from the Town for performing any official duty.

8. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

Section 4: The Duty to Disclose and the Duty to Recuse

1. Duty to Disclose

Public servants shall not participate in the conduct of business on behalf of the town or enter into discussion or deliberation of any matter without first, publicly and on the record, stating all dealings, interests, relationships (including employer/employee) that would tend to compromise the public servants' objectivity or create a situation in which there were a potential of unfair economic advantage or the possibility of improper financial gain.

Individuals in an employment relationship (such as business partner or subordinate private employee) with a public servant may appear on behalf of clients, friends, or family before the governmental body of which that public servant is a member if, the public servant publicly discloses such affiliation and recuses himself or herself from participation in the matter as a public servant.

2. Duty to Recuse

Public servants have a duty to recuse themselves from participating in specific action or discussion due to a conflict of interest.[2]

Public servants who have been recused may remain in the hearing room for the public input portion of the hearing and shall seat themselves with the other members of the public who are present. When recused, the recused person shall not participate in further discussions, unless s/he clearly states for the record that s/he is doing so only as general member of the public.

Except as otherwise provided by state law, in the event a board member feels that a member has a conflict of interest, the board or commission may take a non-binding vote to request recusal by that member. Such action may only be initiated by a member of the sitting board.

Not only does a public servant have a duty to recuse himself or herself as outlined in the section above, a public servant must recuse himself or herself in a quasi-judicial action if he or she would not be qualified to sit as a juror in that case.

For example, jurors are not qualified to sit in a case if they have advised or assisted either party in a matter being decided, are prejudiced to any degree regarding the pending matter, or believe they cannot for any reason be totally fair and impartial. (For more information see ***RSA 500-A:12 Appendix A***.)

Section 5: Application of the Conflict of Interest Policy

1. Prior to any vote, each Public Servant should give consideration whether a potential violation of the Conflict of Interest Policy exists. If the Public

[2] This Section shall be read to be consistent with, and not conflict with, RSA 673:14. (See Appendix B.)

Servant believes a potential violation may exist, the Public Servant should disclose such facts to the Presiding Officer.

2. If there is a question regarding a potential conflict of a public servant only a board member may request a non-binding vote of the board as outlined in RSA 673:14 paragraph II (see below).

RSA 673:14 Disqualification of Member

II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the ***request of that member or another member of the board***, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. ***Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members***, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1. ***(Emphasis added)***

Section 6 Implementation

6.1 To facilitate conduct in accordance with this policy, a copy of this policy shall be made available to town officials, legal counsel, employees, volunteers, board and commissions upon hiring, appointment or election to office and at such other times as may be necessary.

Adopted by vote of the Board of Selectmen on this date, the 12th of July, 2004.

Robert Heaton, Chairman

Jay Dinkel, Selectman

Marilyn Peterman, Selectman

Bruce Bowler, Selectman

George Infanti, Selectman

Received and Recorded: 7/15, 2004

Nancy A. Demers, Town Clerk

Appendix

List of New Hampshire State Laws

A. RSA 500-A:12 Examination. –

I. Any juror may be required by the court, on motion of a party in the case to be tried, to answer upon oath if he:

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

II. If it appears that any juror is not indifferent, he shall be set aside on that trial.
Source. 1971, 456:10. 1981, 527:2. 1988, 76:1, eff. June 14, 1988.

B. RSA 673:14 (Applicable for Land Use Boards)

673:14 Disqualification of Member. –

I. ***No member*** of a zoning board of adjustment, building code board of appeals, planning board, heritage commission, or historic district 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. ***(Emphasis Added)***

II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

III. If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place, as provided in RSA 673:11.

Source. 1983, 447:1. 1988, 26:1. 1992, 64:9, eff. June 19, 1992. 1996, 42:11, eff. June 23, 1996.

C. RSA 673:11 Designation of Alternate Members. –

Whenever a regular member of a local land use board is absent or whenever a regular member disqualifies himself or herself, the chairperson shall designate an alternate, if one is present, to act in the absent member's place; except that only the alternate designated for the city or town council, board of selectmen, or village district commission member shall serve in place of that member.

Source. 1983, 447:1, eff. Jan. 1, 1984. 1996, 42:10, eff. June 23, 1996.

D. RSA 669:7 Incompatibility of Offices. –

I. No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of the town's police department on full-time duty. No person shall at the same time hold the offices of town treasurer and town clerk. No full-time town employee shall at the same time hold the office of selectman. No official handling funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

II. The provisions of paragraph I refer to the actual holding of office, and are not to be construed to prevent the transfer between offices of information obtained in the regular conduct of business nor to prevent the personnel in any office from furnishing clerical assistance to any other office.

Source. 1979, 410:1. 1981, 282:3. 1983, 132:1. 1993, 123:1, eff. July 16, 1993. 2000, 308:3, eff. June 21, 2000.