



MEMORANDUM

To: Vermont Municipal Officials
From: VLCT Municipal Assistance Center
Date: June 20, 2017
RE: VLCT Model Conflict of Interest Policy

What is a conflict of interest?

A conflict of interest is a “real or seeming incompatibility between one’s private interests and one’s public or fiduciary interest.” *Black’s Law Dictionary, 8th Ed.*

Conflicts may be either financial or personal, and they may be either direct or indirect:

- A direct financial conflict of interest occurs when a local official acts on a matter affording the official a direct financial gain.
- An indirect financial conflict of interest arises when a local official acts on a matter that financially benefits a person or group closely tied to the official.
- A direct personal conflict of interest is present when a local official acts on a matter that benefits the official in a non-financial way but is of significant importance to the official.
- An indirect personal conflict of interest arises when a local official acts on a matter in which the official’s judgment may be affected because of a familial or personal relationship or membership in some organization and a desire to help that person or organization further its own interests.

Within the context of local government, a perceived conflict of interest can be just as problematic as a real conflict.

Why are conflicts of interest important?

The structure of Vermont local government, the breadth of local government’s responsibilities, and the often-contentious nature of local issues increase the likelihood that allegations of conflicts of interest will be leveled against even the most conscientious municipal official.

Failure to manage ethical dilemmas appropriately can significantly damage the reputation of a local official, an entire public body, or the municipality as a whole. Fortunately, the Vermont Legislature has provided broad enabling authority to create and adopt conflict of interest provisions for resolving local conflicts of interest. It is therefore up to every individual municipality to articulate standards for identifying and managing conflicts of interest.

A municipal conflict of interest policy can help guide elected and appointed officials through situations that present actual or perceived conflicts of interest. The adoption of a conflict of interest policy sets shared expectations about how conflicts and perceived

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conflicts will be handled by municipal officials. This model policy has been drafted as a template which may be modified and adopted by the municipal legislative body.

How is a conflict of interest policy adopted and who does it apply to?

A conflict of interest policy is adopted by vote of the legislative body within the context of a duly-warned public meeting. A municipal policy is effective as soon as it is adopted or at any later date specified by the legislative body.

Twenty-four V.S.A. § 2291(20) gives the legislative body the authority to adopt a conflict of interest policy that will apply to all elected and appointed municipal officials. However, a conflict of interest policy is not meant to govern the behavior of employees which should be addressed separately in the context of a personnel policy and/or purchasing policy.

The adoption of a conflict of interest policy by the legislative body does not preclude any other public body in the municipality from adopting its own conflict of interest policy (especially an appropriate municipal panel such as a development review board, which is required by 24 V.S.A. § 4461 to adopt rules governing conflicts of interest). However, doing so will mean that the members of that public body will have to abide by both policies.

Also note that 24 V.S.A. § 1984 allows the voters of a municipality to vote at an annual or special town meeting to adopt a conflict of interest prohibition for its elected and appointed officials.

What should be done when a conflict is identified?

Conflicts of interest inevitably arise in the workings of small town government, and they should be avoided whenever possible. However, the presence of a conflict does not necessarily mean that a municipal official may not continue to act in a particular situation. The deciding factor should be whether the official is able to act *impartially* despite the presence of a conflict.

One important caveat to the above: A higher conflict of interest standard applies in the context of quasi-judicial decision-making. Quasi-judicial decisions are rendered in situations where the rights of a particular individual are at stake (e.g., tax appeals, vicious dog hearings, land use decisions). In those situations the affected individual has the right to receive constitutional due process, which includes the right to an impartial decision maker. If a municipal official with a conflict of interest participates in a quasi-judicial process, a court may determine that the official was not an impartial decision maker and may vacate the decision and order the matter be reconsidered without the participation of the conflicted member. See e.g. *Appeal of Janet Cote*, 257-11-02 Vtec (2003). Therefore, municipal officials should be more inclined to recuse themselves when they are participating in a quasi-judicial process.

When an actual or perceived conflict arises or is identified, VLCT recommends taking the following steps, which have been incorporated into this model policy:

1. The actual or perceived conflict shall be *disclosed* at an open meeting or hearing.
2. The public body shall *discuss* the situation at that meeting or hearing.
3. The individual with the actual or perceived conflict shall *consider* recusal.
4. The individual with the actual or perceived conflict shall *decide* whether to recuse him or herself and *explain* why.
5. The minutes of the meeting or the written decision from the hearing shall *document* the above process.

Unless there is a local ordinance or charter provision that states otherwise, an elected official may not be forced to recuse himself or herself or to resign if requested, even if a clear conflict of interest has been identified. Other elected officials may express their opinions about the subject, and may privately or publicly admonish the elected official who fails to handle a conflict appropriately, but such is the extent of their power over the situation. Each elected official within a municipality is independent from the other elected officials and answers only to the voters. The situation is different for an appointed official who may be instructed to recuse himself or herself or may be removed from office by the official or public body that appointed him or her.¹

This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy or any express or implied guarantee of legal enforceability or legal compliance. VLCT also does not represent that any policy is appropriate for any particular municipality. Please seek legal counsel to review any proposed policy before adoption.

If you have specific questions about this policy please contact us at (800) 649-7915 or info@vlct.org.

¹ Certain appointed officials such as a Zoning Administrator and a Town Manager may only be removed for cause and after being afforded with procedural due process protections including notice and a reasonable opportunity to be heard.