



**Maine
Municipal
Association**

**MUNICIPAL
OFFICERS
MANUAL**



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60 Community Drive
Augusta, Maine 04330
207-623-8428 - 800-452-8786
www.memun.org

Conflict of Interest

In order to monitor their own behavior as well as the behavior of all the other officials in the municipality, the municipal officers should be aware of the provisions of law governing “conflict of interest.”

All municipal officials have been sworn into public office to serve the interests of the public as a whole and in the municipal official there is vested a public trust. A betrayal of that trust occurs when any official acts in his or her own interest rather than in the public interest while performing his or her job.

Maine law encompasses four “conflict of interest” situations that can occur in municipal government:

- financial conflict of interest;
- incompatibility of office;
- prohibited appointments or employment; and
- bias.

Some of these legal standards, such as the incompatibility of office or quasi-judicial bias provisions, are designed primarily to ensure fairness in government and a healthy system of checks and balances within the governmental structure. The legal provisions governing conflict of interest or prohibited appointments/employment, on the other hand, are designed to prevent a municipal official from advancing his or her own self-interest at the expense of the broader public interest. (See MMA’s “Ethics and Conflicts of Interest” Information Packet, “Ethics for Elected Officials,” “Legal Notes.” *Maine Townsman*, May 2007 and “A Code of Ethics,” “Legal Notes.” *Maine Townsman*, August/September 2005); for additional information on this topic.

CONFLICT OF INTEREST: STATUTE AND CASE LAW

In a sense, all issues regarding governmental ethics boil down to the situation of the municipal official being motivated by conflicting or competing interests. The legal concept

of “conflict of interest” as defined by statute and case law, however, is narrower than the broad concept of conflict of interest in that it is limited to interests of a financial nature only.

Title 30-A M.R.S.A. § 2605 and case law define when an official will be presumed to be “self interested” while performing a particular governmental action. There are three conflict rules:

- **Business Interest.** One of the rules addresses situations which involve a municipal officer’s interest in a business, such as when awarding a contract. For this rule, § 2605(4) establishes a two-part test. It applies only to a board member who (1) is an “officer, director, partner, associate, employee, or stockholder of a private corporation, business or other economic entity” which is the subject of the issue before the board, and (2) is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity.” If a board member falls into one of the relationships listed in Category 1 but does not have the 10% interest covered by Category 2, then that board member does not have a legal conflict of interest under this statutory provision.
- **Personal Financial Interest.** The second test governs situations in which the municipal officer, and not his or her business, is the subject of the discussion or vote. For a board member whose conflict of interest is not governed by § 2605(4) (because the board member does not fall within both categories discussed in the preceding paragraph), there is a common law (case law) standard defining activity which may constitute a conflict of interest. That standard is “whether the municipal official by reason of his interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interests of those for whom the law authorized and required him to act.” *Lesieur v. Inhabitants of Rumford*, 113 Me. 317 (1915), as cited in *Tuscan v. Smith*, 130 Me. 36 (1931).
- **Appearance of Impropriety.** The third test, which also appears in § 2605, is whether an appearance of a conflict of interest exists. Even if no legal conflict of interest exists, a board member would be well advised to avoid even the appearance of a conflict (through disclosure and/or abstention) in order to maintain the public’s confidence in the board’s work. *Aldom v. Roseland*, 42 NJ Super. 495, 127 A.2d 190 (1956); 30-A M.R.S.A. § 2605(6).

HOW THE AFFECTED MEMBER SHOULD HANDLE THE CONFLICT

If a conflict arises that is addressed by § 2605, its procedures should be followed (full disclosure and abstention from participation and voting by the member, recorded by the municipal clerk). If a conflict arises that is not addressed by § 2605, if the board has bylaws

or rules of procedure which spell out a process for dealing with conflicts of interest, the board member should follow those rules. If there are no such rules, the member should make full disclosure for the record of his or her financial interest in the matter which might prevent him or her from being impartial in the matter before the board and the other board members should vote on whether the member must abstain from acting on the matter. If the member must abstain under § 2605 or under board bylaws, or if the board otherwise votes that the board member must abstain from any further discussion and voting as a board member on that matter, this abstention and reason must be permanently recorded with the town or city clerk. After making these disclosures, the board member should leave his or her place at the decision-making table and take a seat in the audience if the board member wishes to participate as a member of the public.

FAILURE TO ABSTAIN

If a board member who has a legal conflict of interest fails to abstain from the discussion and from the vote and fails to note the nature of his or her interest in the record of the meeting, a court could declare the vote void if someone challenged it.

DEFINED BY ORDINANCE OR CHARTER; AUTHORITY OF BOARD TO DETERMINE

A municipality may define what constitutes a conflict of interest by including such a provision in a local ordinance or charter. Even without such a local provision, the courts have recognized that a board has general authority to determine whether one of its members has a legal conflict. Such a decision can be made either at the request of the affected board member or on the initiative of the rest of the board.

Incompatibility of Office

One person may simultaneously hold more than one position or office in municipal government. There are certain positions in municipal government, however, which are incompatible with other positions, and cannot therefore be held simultaneously by the same person.

Although the concept of “incompatible offices” often is described as a “conflict of interest,” these are not the same. As has been discussed, a statutory conflict of interest concerns a municipal official’s divided loyalty between his or her financial self-interest and the public interest.

The common law doctrine of incompatibility of office also is intended to assure uncompromising loyalty, but this time the tension exists between the legitimate duties of two separate offices which no single individual—no matter how capable or well-intentioned—can perform with undivided loyalty. It is the nature of the offices themselves,