

## **TOWN OF BRISTOL**

### **MEMORANDUM**

**To:** All Town of Bristol Elected and Appointed Officials,  
Department Heads and Employees  
**From:** Bill Bryant, Town Administrator  
**Date:** April 25, 2012  
**Subj:** Newly adopted Conflict of Interest Policy

At its meeting of April 23, 2012, the Selectboard adopted the attached policy regarding Conflict of Interest. This policy applies to all elected and appointed officers of the Town, and to all Town departments and employees as well. The Selectboard has no jurisdiction over the schools or library, and thus this policy would not apply to those organizations.

The adoption of a Conflict of Interest policy is authorized by state statute and is highly recommended by the Secretary of State's office, the Vermont League of Cities and Towns, and by our auditors. The policy outlines how situations should be handled when an officer has a conflict of interest which is very much in keeping with the actual practice of our officers and boards in the past. The policy is an attempt to formalize these practices and to provide guidance in situations where the line between actual and appearance of conflict of interest is unclear. The policy was modeled on a draft policy provided by VLCT.

Bristol is a small town and the number of town officers is significant. The Selectboard tried to recognize this fact in some of the details of the policy. The Board did its best to recognize that individuals who serve the community in an official capacity do not give up their own rights as citizens to represent themselves before our public bodies, but to also provide clear guidance as to how those individuals and public bodies should conduct themselves in such situations.

Please review and become familiar with the policy and also feel free to contact me if you have any questions or concerns about the policy.

## **TOWN OF BRISTOL**

### **SELECTBOARD POLICY REGARDING CONFLICT OF INTEREST**

#### **Section 1: Authority**

The following policy regarding conflict of interest of public officers of the Town of Bristol is hereby adopted by the Selectboard under the authority granted by 24 V.S.A. §2291(20).

#### **Section 2: Purpose**

The purpose of this policy is to assure that the business of the Town of Bristol is conducted in such a way that no public official of the Town will gain a personal or financial advantage from his or her public service to the community. It is the intent of this policy to assure that all decisions made by municipal officials are based on the best interest of the community at large. It is the intent of this policy that the public trust in municipal officials will be preserved, and that the reputations of its public officers shall be protected from unwarranted criticism in the performance of their public service.

#### **Section 3: Definitions**

- A. Conflict of interest means a direct personal or financial interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the public body in which the official holds office or is employed. Conflict of interest does not arise in the case of votes or decisions on matters in which the public official has a personal or financial interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision. See 19 V.S.A. §1984(b).
- B. Emergency means an imminent threat or peril to public health, safety or welfare.
- C. Ex parte communication means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel or any person interested in the outcome of any quasi-judicial proceeding before a public body that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- D. Official act or action means any legislative, administrative or judicial act performed by any elected or appointed officer or employee while acting on behalf of the municipality.
- E. Public body means any board, commission or committee of the municipality.
- F. Public interest means an interest of the community as a whole, conferred generally upon all residents of the municipality.
- G. Public officer or public official means a person elected, appointed or employed to perform executive, administrative, legislative or quasi-judicial functions for the municipality.
- H. Quasi-judicial proceeding means a matter in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.
- I. Recusal means to remove oneself from participation in a decision because of a real or perceived conflict of interest.

#### **Section 4: Prohibited Acts**

- A. A public officer shall not participate in the taking of any official action by the public body of which he or she is a member if he or she has a conflict of interest in the matter under consideration.

- B. A public officer shall not participate in the taking of any official action by the public body of which he or she is a member if he or she has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding before the public body. This shall not apply to a member's particular political views or general opinion on a given issue.
- C. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general.
- D. Public officers shall not use resources not available to the general public, including but not limited to town staff, time, equipment, supplies, or facilities for private gain or personal purposes.
- E. Nothing in this policy shall prohibit a public officer from representing him or herself, or another person, business, organization or client, in any cause, proceeding, application or other matter pending before the public body in which the officer holds office or is employed. Public officers doing so must exercise due care to assure that the frequency with which they act in this manner does not interfere with their ability to serve in their official capacity and/or hamper the ability of the public body to conduct its business due to frequent recusals. In matters where a public officers represents him or herself or another party, he or she must recuse him or herself and shall not sit with the public body during the deliberations on the matter being considered. The public body must exercise due care to assure that it establishes a clear line between the public officer's right to represent a matter before it in making a presentation and answering questions about the matter, which shall be allowed, and from participating in the deliberative discussions leading to a decision by the public body, which shall not be allowed.

#### **Section 5: Disclosure**

A public officer who has reason to believe that he or she may have a conflict of interest or has an indirect personal or financial interest that may cause the appearance of a conflict of interest in a matter pending before the public body in which the officer holds office or is employed, but believes that he or she is able to act fairly, objectively and in the public interest in spite of the conflict of interest or appearance thereof shall, prior to participating in any official action on the matter disclose publicly to the public body considering the matter, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Nevertheless, the person or public body which appointed that public officer retains the authority to order that officer to recuse him or herself from the matter subject to the procedure outlined below.

A public officer is required to disclose all ex parte communications with a party in quasi-judicial proceedings before the public body on which he or she serves.

#### **Section 6: Recusal**

A public officer shall recuse him or herself from any matter in which he or she has a conflict of interest pursuant to the following:

- A. A public officer who has recused him or herself from a proceeding shall not sit with the public body, or participate in that proceeding as a member of the public body.
- B. Any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself. In the case of a public officer who is an appointee or employee, the person making the request for recusal shall be given the opportunity to appeal the decision of the officer or employee, if the officer or employee decides not to recuse themselves, to the public body which appointed that public officer, which body shall have the authority to order that officer to recuse him or herself from the matter. Action on the matter shall be recessed to a time certain to allow time for the question of recusal to be determined by the appointing public body.

- C. If a previously unknown conflict is discovered during the course of consideration of a matter, the public officer shall recuse him or herself at that time and consideration of the matter may proceed.
- D. The public body may recess the proceedings to a time certain if, after a recusal(s), it is not possible to take action due to lack of quorum of the body.
- E. In the event that the number of members having a conflict of interest in a matter under consideration before a public body is sufficient to prevent a quorum of the public body from acting on the matter, the members with conflicts may participate in the decision provided disclosure of the conflicts has been recorded.
- F. Elected public officers shall have the sole authority to decide for themselves when to recuse themselves from participation in a pending matter.

**Section 7: Exception**

The recusal provisions of Sections 4 and 6, shall not apply if the legislative body of the municipality determines that an emergency situation exists and that actions of a public body or officer otherwise could not take place. In such cases, a public officer shall disclose his or her conflict or appearance of conflict of interest in accordance with Section 5.

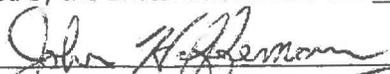
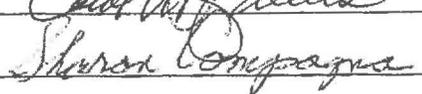
**Section 8: Enforcement**

In cases where the conflict of interest policies outlined in Sections 4, 5, 6 and 7 are alleged to have not been followed by an appointed public officer or employee, the public body which appointed that public officer may review the matter and take action to discipline an offending officer. Forms of disciplinary action that may be taken include the following:

- A. The public body which appointed the public officer may meet to discuss the conduct of the public officer. Executive session may be used for such discussion in accordance with 1 V.S.A. §313(4). If the public officer whose conduct is in question is requested to attend such meeting, he or she shall retain the right to request that the discussion take place in public. The public body shall retain the right to deliberate following any public discussion in executive session before making its formal findings in the matter.
- B. The public body which appointed the public officer may admonish the offending officer in private, either verbally or in writing. The public officer shall be given the opportunity to respond to such admonishment.
- C. The public body which appointed the public officer may admonish the offending officer at an open meeting and reflect this action in the minutes of the meeting. The public officer shall be given the opportunity to respond to such admonishment.
- D. The public body which appointed the public officer may request that the offending public officer resign from his or her office.
- E. The public body which appointed the public officer may remove the offending officer from his or her office, provided such action is taken in accordance with applicable law.

**Section 9: Effective Date**

This policy is hereby adopted by the Bristol Selectboard this 23<sup>rd</sup> day of April, 2012.

  
 \_\_\_\_\_, Chair  
  
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