

Recommended Municipal Ethics Language
Submitted to House Government Operations Committee
February 16, 2024

Sec 1. 24 V.S.A. § 1984 is amended to read:

§ 1984. Conflict of interest and unethical conduct prohibition

~~(a)(1) Each town, city, and incorporated village, by majority vote of those present and voting at an annual or special meeting warned for that purpose, shall adopt a conflict of interest prohibition for its elected and appointed officials, which shall contain:~~

~~(A) A definition of “conflict of interest.”~~

~~(B) A list of the elected and appointed officials covered by such prohibition.~~

~~(C) A method to determine whether a conflict of interest exists.~~

~~(D) Actions that must be taken if a conflict of interest is determined to exist.~~

~~(E) A method of enforcement against individuals violating such prohibition.~~

~~—(2) The requirement set forth in subdivision (1) of this subsection shall not apply if, pursuant to the provisions of subdivision 2291(20) of this title, the municipality has established a conflict of interest policy that is in substantial compliance with subdivision (1).~~

~~(b)(1) Unless the prohibition adopted pursuant to subsection (a) of this section contains a different definition of “conflict of interest,” for the purposes of a prohibition adopted under this section, “conflict of interest” means a direct personal or pecuniary 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 agency or public body in which the official holds office or is employed.~~

~~—(2) “Conflict of interest” does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary 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.~~

(a) Every municipality, by majority vote of its legislative body, shall adopt a policy to prohibit conflicts of interest and unethical conduct by its elected and appointed officers that conforms to the requirements in this section. The policy shall ensure that the business of this municipality will be conducted in such a way that no public officer of the municipality will gain a personal or financial advantage from their work for the municipality and so that the public trust in its officers will be preserved, and that all decisions made by public officers are based on the best interests of the municipality.

(b) The policy shall apply to every officer of the municipality, whether elected or appointed, but does not apply to employees who are governed by other policies, such as personnel and purchasing policies.

(c) The policy shall use the following definitions:

(A)(1) "Conflict of interest" means a real or perceived incompatibility between a public officer's private interests and their public or fiduciary interests to the municipality they serve. A conflict of interest arises when there is a direct or indirect personal or financial interest of a public officer or a person or group closely tied with the officer in the outcome of an official act or action, or any other matter pending before the officer or before the public body in which the public officer holds office.

(2) For purposes of subdivision (A)(1) above, "person or group closely tied with the officer" includes their spouse, household member, child, stepchild, parent, parent-in-law, grandparent, grandchild, sibling, aunt or uncle, sibling-in-law, business associate, employer, or employee.

(3) A conflict of interest may exist in a situation where a public officer has:

i. Publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding. This shall not apply to a member's particular political views or general opinion on a given issue.

ii. Not disclosed ex parte communication(s) related to a quasi-judicial proceeding that is before the body to which that officer belongs.

(4) A "conflict of interest" does not arise in the case of an official act or action in which the public officer 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.

(B) "Emergency" means an imminent threat or peril to the 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 a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.

(D) "Official act or action" means any legislative, administrative, or quasi-judicial act performed by any public officer while acting on behalf of the municipality. This term does not apply to ministerial acts or actions wherein no discretionary judgment is exercised.

(E) "Public body" means any board, council, commission, or committee of the municipality or any committee of any of the foregoing boards, councils, or commissions.

(F) "Public interest" means an interest of the municipality, conferred generally upon all residents of the municipality.

(G) "Public officer" means person elected or appointed to perform executive, administrative, legislative, or quasi-judicial functions for the municipality. This term does not include municipal employees.

(H) "Quasi-judicial proceeding" means a case 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 opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

(d) The policy shall prohibit the following conduct. A public officer shall not:

(A) participate in any official act or action if they have a conflict of interest in the matter under consideration;

(B) personally – or through any member of their household, business associate, employer or employee – represent, appear for, or negotiate in a private capacity on behalf of any person or organization that has an interest in an official act or action pending before the public body in which the public officer holds office;

(C) accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general;

(D) request or accept any reward, gift, or favor for taking an official act or action or advocating for or against an official act or action;

(E) use resources unavailable to the general public, including municipal staff time, equipment, supplies, or facilities, for private gain or personal purposes; or

(F) if they are a member of a public body, give the impression that they have authority to make decisions or take actions on behalf of that body.

(e) The policy shall require disclosure and discussion of a known or alleged conflict of interest on any matter before the public body.

(A) A public officer who believes they may have a conflict of interest, shall disclose it to the public body at a duly warned meeting for discussion. A public officer who believes that another member of their public body has a conflict of interest may disclose that conflict at a duly warned meeting for discussion.

(B) Once there has been a disclosure of a real or perceived conflict of interest, other public officers shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered during a meeting or hearing conducted

by a public body of the municipality, the public body shall take evidence pertaining to the conflict and, if appropriate, adjourn to an executive session to address the conflict. If they determine no conflict exists, they may participate in their official capacity.

(C) If a public officer's decision to not recuse themselves is challenged by another member of their public body, and a majority of that public body determines that a conflict of interest does not exist or determines a conflict of interests exists but the public officer can act fairly, objectively, and in the public interest despite its existence, the public officer to continue serving on the related action or business.

(D) If a majority of the public body determines that a conflict of interest does exist, the public officer shall be recused from taking action or participating in discussion on the related action or business.

(E) Recused public officers shall remove themselves from the meeting entirely and not participate in any discussion, deliberation, executive session, voting, or other action on the matter in their official capacity. This only applies to a public officer's participation as a public officer and not to their participation as a private citizen.

(E) The recusal provisions shall not apply if the legislative body determines that an emergency exists or that actions of a quasi-judicial public body otherwise could not take place. In such a case, a public officer who has reason to believe they have a conflict of interest shall only be required to disclose such conflict as provided in this subsection.

(E) Failure to comply with the requirements of such a policy shall result in censure, whether private or public, and may result in removal of an appointed public officer by majority vote of the legislative body or by recall of an elected public officer by petition of XX% of the registered voters of the municipality.