

Conflict of Interest Ordinance

Town of Atkinson, New Hampshire

March 8, 2011

PLEASE NOTE: THIS TOWN OF ATKINSON, NEW HAMPSHIRE ORDINANCE WILL BE REVIEWED ON AN ANNUAL BASIS AND MODIFIED, IF NECESSARY, TO MAINTAIN CONSISTENCY WITH CURRENT BUSINESS PRACTICES. IN ADDITION, THE ORDINANCE MAY CHANGE WITH OR WITHOUT PRIOR NOTICE TO STAFF AT ANY TIME. HOWEVER, THE TOWN OF ATKINSON WILL MAKE A REASONABLE EFFORT TO SEEK INPUT FROM STAFF PRIOR TO ANY CHANGES.

Conflict of Interest Ordinance

ADOPTED APRIL 8, 1997

AMENDED MARCH 9, 1999
AMENDED MARCH 14, 2000
AMENDED MARCH 13, 2001
AMENDED MARCH 12, 2002
AMENDED MARCH 14, 2006
AMENDED MARCH 13, 2007

Amended March 8, 2011

Declaration of Policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made through the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government members to perform their duties without conflicts between their private interests and those of the citizens they serve. In recognition of these goals, a Conflict of Interest for all town officials and employees is adopted in accordance with RSA 31:39A.

Section I Election of Conflict of Interest Committee.

A. The town will establish the Conflict of Interest Committee consisting of three (3) persons. For the first year, three at large members, exclusive of elected and appointed town officials, town employees, or relatives of such persons, and contractors or their employees who provide services to the town, shall be appointed by the Town Moderator to serve from July 1, 1997 until the next annual town elections. After the first year, members of the Committee shall be an elected body consisting of three (3) members at large with staggered three-year terms, after the following initial terms are completed:

Member at large [one (1) year]: 1998 to 1999

Member at large [two (2) years]: 1998 to 2000

Member at large [three (3) years]: 1998 to 2001.

The Committee will be increased by two (2) members and will now consist of five (5) members. The two (2) additional members are to be appointed by the Town Moderator within 30 days of approval of this amendment. They may be appointed to serve until the next annual Town Election, at which time they may be elected to terms of one year and two years respectively. Upon completion of the one year and two year terms they may be elected to three year terms.

B. Should a vacancy in the Committee arise, the remaining members of the Committee will elect a town citizen to serve out the remainder of the term year. At the following annual town elections, a member at large will be voted to serve out the remainder of the term.

C. No member of the Committee shall hold any Town, Federal, State, or County elective or appointed office, board membership, commission membership or trusteeship. No member of the Committee shall be employed full or part time by the Town of Atkinson. Family of elected or appointed town officials, town employees or contractors or their employees who provide services to the town shall not be allowed to serve on the Committee. This does not prevent a member of the Committee from volunteering unpaid services to the town, where no conflict of interest is created.

D. Officers: The Committee will have three officers (Chairman, Vice-Chairman, and Secretary) serving one-year terms. They will be elected annually, by Committee majority, at the first Committee meeting following the annual Town Election. Additional elections will be held, as necessary, to fill officer vacancies.

Section II Purpose. The purpose of this code is to establish guidelines for ethical standards of conduct for all officials and employees by setting forth those acts or actions that are incompatible with the best interests of the Town thereby regulating conflicts of interest or the appearance of conflict; and also requiring disclosure by such officials and employees of private financial or other interest in matters affecting the town that may be or appear to be a conflict of interest.

Section III Investigatory Power. The Committee, only after a petition is filed under Section A, Procedures For Inquiries and Alleged Violations may require of any member of town government to appear before it and give such information as it may require in relation to this office, its function and performance. The Committee shall give at least forty-eight (48) hours' written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section. The Committee, for this purpose, may administer oaths and require the production of evidence.

Section IV Definitions. As used in this ordinance, the following terms shall have the meanings indicated:

BOARD Any board, committee or commission, permanent or special, established by the Selectmen or New Hampshire law.

COMPENSATION Any money, gift, thing of value or economic/financial benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

CONFLICT OF INTEREST A situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.

FAMILY Includes spouse, parents, stepparents, grandparents, children, stepchildren, grandchildren, brothers, stepbrothers, sisters, stepsisters, and in-laws.

INTEREST Any legal or equitable ownership or right held directly, or indirectly, jointly, or in part, at any time during the term of office, or within the previous twelve-month period. The specific interests of an official or employee of the town that are subject to this ordinance as being in conflict are as follows:

- A. Ownership or title in a stock, security, investment, certificate, partnership, venture, trust, royalty, lease or other equity, which entitles the owner to business rights or profits.
- B. Creditor entitlement in a note, bond, debenture or other evidence of such entitlement.
- C. Ownership of land within 200 feet of any land being discussed by the town.
- D. Acting as an agent of a person or company in dealings with the town.
- E. A town member acting for the town with a person or company who is an employer of the member, or family, as defined by Section IV. Definitions. Paragraph: Family.

MEMBER OF TOWN GOVERNMENT (Also referred to as "member") - Any elected or appointed official, board member or town employee, whether full- or part-time, permanent or temporary, including those employed by the town and paid by federal or state assistance programs and including but not limited to all town employees, Selectmen, Budget Committee members, Cable Television Committee members, Checklist Supervisors,

Committee members, Conservation Commission members, Rockingham Planning Commission members, Library Trustees, Planning Board members, Recreation Committee members, the Town Clerk/Tax Collector, the Town Moderator, the Treasurer, the Trustees of the Trust Funds, Zoning Board of Adjustment members and members of any other town boards, commissions or committees, including those yet to be established.

RESPONDENT A member of town government named in a petition submitted to the Committee as an inquiry or alleging a violation of the Conflict of Interest.

Section V Prohibited Conduct.

A. Participating in prohibited conduct establishes a Conflict of Interest with the town. It is in violation of this code for any member to:

- (1) In his or her official capacity, introduce, discuss, deliberate, approve or vote upon any matter in which he or she or any member of his or her family has an interest known to said member.
- (2) Knowingly enter into any discussion, testimony or deliberation without first, publicly and for the record, stating all dealings, interests, relationships and possible conflicts that may exist between said member and his or her family, the principals and the issue under deliberation, as may be known by the member.
- (3) Knowingly participate in town business without disclosing all potential conflicts of interest.
- (4) Knowingly use town property or labor for personal use.
- (5) Knowingly use town property or labor to influence the political cause of any candidate for public office or any political party. Use any proprietary information acquired through or by virtue of his or her official position for his or her financial benefit or for the financial benefit of any other person or business. The foregoing does not apply to information available to the general public.
- (6) Otherwise than as provided by law for the proper discharge of his or her official duties, directly or indirectly request or receive any compensation from anyone other than the town in relation to any particular matter in which the town is a party or has a direct and substantial interest.
- (7) Otherwise than as provided by law for the proper discharge of his official duties directly promise or offer such compensation as referred to in this code.
- (8) Knowingly accept a gift with a value in excess of five dollars (\$5.00), or allow acceptance of such a gift by a family member from any individual, group or corporation knowingly dealing with an area of town government in which the member has an interest or jurisdiction. The foregoing does not apply to gifts from family members.
- (9) Knowingly give false information concerning dealings, interests, relationships and possible conflicts to the various supervisors, boards, commission and committees and the Selectmen.
- (10) Knowingly fail to cooperate with the Committee or other investigating authority in the investigation of any complaint alleging a violation of the tenets of this code.
- (11) Knowingly sign a purchase order where there is a prior or present financial interest with the vendor(s).

B. No elected or appointed officer or employee, whose salary is paid in whole or in part from the town treasury shall appear in his official capacity on behalf of a private interest before any town board. Selectmen, however, may appear without compensation on behalf of constituents or in the performance of public or civic obligations.

C. No elected or appointed official or employee whose salary is paid in whole or in part from the town treasury shall represent private interests, other than his or her own, in any actions or proceedings against the interest of the town in any litigation to which the town is a party.

D. No town official or employee shall claim to act on behalf on the Selectmen, boards or departments without prior authorization from said body or department.

Section VI Exclusions.

A. The prohibition against gifts or favors shall not apply to an occasional non-financial gift, insignificant in value, or an award publicly presented in recognition of public service or any gift which would have been offered or given to him or her if he or she was not a member. Unsolicited advertising or promotional items or materials of nominal intrinsic value such as pens and calendars. It shall not be a violation for elected members to accept donations for the express purpose of financing a political campaign, provided that such contributions are reported in accordance with all local, state and federal laws pertaining to such donations or services and/or financial value.

B. The mere purchase of goods or non-professional services (services from other than attorneys, engineers, architects and surveyors) from a person or business in the ordinary course of that person's or business's retail or service business shall not prevent a member from introducing, discussing, approving or voting upon a matter which relates to that person or business.

C. Those actions taken as part of the legislative process of making a law or laws which affect the community in general are exempt from the provisions herein. Legislative actions concerning the granting of specific contract awards and/or actions designed to benefit one (1) identified or identifiable individual specific group of individuals are not exempt.

D. Nothing in this ordinance shall prevent political candidates or parties from holding public meetings in town buildings, or prevent members from exercising and carrying out the responsibilities and obligations of their office or position of employment.

Section VII Procedures for Inquiries and Alleged Violations.

A. Any person or group may petition the Committee to make a ruling on a situation which may or may not constitute a conflict of interest. The petition must be submitted to the Committee within one year after the alleged violation has occurred.

(1) A petition must be in writing, signed and dated and include the name and address of each petitioner. Business owners submitting a petition must also include the name and address of the business. The petition must be placed in a sealed envelope marked "Conflict of Interest Committee".

(2) The petition must be mailed to: "Conflict of Interest Committee, P.O. Box 450, Atkinson, NH 03811". The original petition shall remain on file in the Town Hall, under the exclusive control of the Committee.

(3) The person submitting the request for information or the petition of alleged Conflict of Interest must complete a Petitioner Information Form.

B. The Committee will first review the inquiry or alleged violation and determine if it is within the jurisdiction of the Committee's authority. If the petition is found to be within the Committee's jurisdiction, the Committee will proceed with an investigation and hearing if deemed necessary.

C. After review, evaluation, and appropriate investigation the Committee shall, within thirty (30) days of the petition having been taken up by the Committee, make a finding on the inquiry or alleged violation. If necessary, the Committee may vote to extend its investigatory period up to a maximum of ninety (90) days from when the matter is first presented to the Committee as an agenda item.

D. Pursuant to RSA 31:39a, violating this code shall be grounds for recommending disciplinary action to be taken by the Board of Selectmen if found by the majority vote of the Committee.

E. Findings as to employees shall be forwarded to the respondent and Selectmen for appropriate action in accordance with applicable personnel policies and procedures and union contract requirements. Findings shall include supporting arguments.

F. Findings as to elected and appointed members (excluding town employees) shall be forwarded to the respondent and Selectmen with a recommendation for removal or censure, if appropriate. Findings shall include supporting arguments. The Selectmen shall have authority to order removal of or censure said elected or appointed members.

G. The Selectmen shall have forty-five (45) days from the date a finding is submitted to the appropriate office to act on the Committee decision.

H. If the Selectmen determine, by a majority vote, that removal is warranted, the elected or appointed member shall be given the opportunity to resign. If said member chooses not to resign, a petition to remove shall be filed with the Superior Court.

I. Any member alleged to have violated this code is entitled to a public hearing, with notice posted in two (2) public places seven (7) days prior thereto. When appearing before the Committee, said member may call witnesses on his or her behalf and may retain representation by legal counsel at his or her own expense if he or she so chooses.

J. Nothing in this code shall be construed to prohibit any person from petitioning the Superior Court to remove a member of government on the ground that the violation in question warrants removal.

K. A respondent may request that the Committee make a ruling on any petition that is withdrawn or invalidated. If such a request is made, the Committee shall complete an investigation pursuant to the procedures described herein.

Section VIII. Distribution of Conflict of Interest Ordinance.

A. Each member and employee, as defined in Section IV. Definitions shall be furnished with a copy of this Conflict of Interest Ordinance including amendments and changes prior to assuming their respective duties of office or employment. Copies of the Conflict of Interest, amendments and changes can be obtained from the Town Clerks Office.

B. Failure to be furnished or obtain a copy of the Conflict of Interest Ordinance with amendments and changes shall not be grounds for relief from observing and compliance with the ordinance, amendments, and changes.

Exemption period. Any member elected, appointed or engaged before July 1, 1997, shall be exempt from the provisions of this ordinance for a period of thirty-one (31) days.