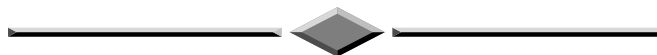


TOWN OF BROOKLINE, NEW HAMPSHIRE

REPORT OF THE COMMITTEE TO EXAMINE CONFLICT OF INTEREST



November, 2004



The Conflict of Interest Committee was chartered by the 2004 Brookline Town Meeting to examine and report on the need for a Conflict of Interest Ordinance and/or Policy for the Town. This report is the result of the work by the Conflict of Interest Committee.

SUMMARY

The Conflict of Interest Committee consisted of the following five citizens, appointed by the Town Moderator, Tom Arnold:

Christina McKillop	Chairman
David O’Sullivan	Vice-Chairman
James Murphy	Secretary
Robert Parodi	Selectman’s Representative
Betty Hall	At-Large Member

The committee held their first meeting on April 22, 2004, meeting approximately bi-weekly throughout the summer of 2004.

The committee began by examining existing ethics regulations and policies of other communities in New Hampshire. In all, material from eleven different towns were reviewed by the committee. It was soon discovered that there were basic ethical guidelines that appeared in nearly all as a recurring common theme.

The committee identified these as “brightline” issues; ethical standards that are clear, easily understood, and not subject to interpretation or inference. We assembled these brightline issues into our recommended Code of Ethics.

The committee also sought input from both the public as well as officials of the Brookline town government. Letters were sent to all offices, boards, committees and commissions, as well as solicitations in two local newspapers. The committee received a total of ten letters in response. Some letters expressed a concern over potential Conflicts of Interest in current or past town affairs while others expressed concern over the committee’s function.

The committee reviewed the bylaws or operating procedures for all town boards, committees, and commissions and noted that differing levels of preparation for dealing with Conflict of Interest.

The Planning Board and Zoning Board of Adjustment have specific RSAs that govern Conflict of Interest (RSA 673:14). The Planning Board, Zoning Board of Adjustment, Conservation Commission, and Board of Selectman have procedures in place for designating alternates to fill in for recused members. No other town board, committee, commission, or department has addressed the issue of Conflict of Interest, or the issue of identifying alternate members.

RECOMMENDATIONS

The committee makes the following recommendations:

1. The committee found that the issue of Conflict of Interest is multifaceted. One facet is education. The town should develop basic training materials that explain what is and is not a conflict of interest as well as the implications of Conflict of Interest. These materials should include examples and scenarios of what are, and equally important, what are not conflicts of interest.
2. Another facet of Conflict of Interest is one of communication. Often times town officials are taking correct actions with regard to potential conflicts of interest but their actions are not well documented or communicated, leaving a perception of impropriety where none exists. Town officials should more fully document and formalize decision-making procedures and all boards, committees, commissions, and departments should maintain records of important decisions in either minutes or other appropriate documentation.
3. All town boards, commission, committees, departments and officials should consider, in advance, how alternates will be designated should an official recuse himself or herself. Procedures for designating the alternate should be included in the bylaws or operating procedures of that board, commission, committee or department.

For the following public servants who are not part of a board, committee or commission, a standing policy for designating an alternate, not similarly conflicted, should be established by the Board of Selectman:

Road Agent
Building Inspector
Code Enforcement Officer
Chief of Police
Ambulance Director
Emergency Management Director
Overseer of Public Welfare
Selectman's Administrative Assistant and office staff

For the following public servants who are not part of a board, committee or commission, a standing policy for designating an alternate, not similarly conflicted, should be established by the Fire Wards:

Fire Inspector
Fire Chief

4. All town boards, commissions, committees, departments, and officials should immediately adopt the recommended Code of Ethics on their own authority,

adapting its provisions to address the specifics of their own offices.

5. The Board of Selectmen should place upon the Town Warrant a Sense of the Meeting article encouraging each and every town board, commission, committee, department and official to adapt and adopt a code of ethics based up that Sense of the Meeting Warrant Article.

The committee also observed situations, not specifically related to Conflict of Interest, but worthy of consideration by the Board of Selectmen. We make the following recommendations based on these observations.

1. There is no single repository for official town documents. Our search for all town by-laws was complicated by the realization that documents were not centrally compiled into a single cohesive document. Several of the towns we encountered had all their municipal ordinances, regulations, by-laws, and operating procedures collected in a single municipal code. This compiled code was also provided online as part of their town web site. We recommend that Brookline consider consolidating their disparate municipal documents into an organized central document for easier reference and to post and maintain the same on the town web site.
2. There may be town officials without a working understanding of the basic requirements of public office, in particular, the requirements of RSA 91-A. We recommend that the Town develop introductory training materials on the basics of municipal leadership and the legal requirements. This material could be combined with the ethics training materials mentioned previously.

Recommended Code of Ethics

1. Purpose

The proper operation of democratic government requires that public servants 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.

The purpose of this code is to establish guidelines for the ethical standards of conduct for public servants. As such, the Town of Brookline

- Expects our public servants to act in the best interest of the town.
- Expects public servants to disclose, whenever possible, any personal, financial or other interests in matters affecting the town that come before them for action.
- Expects public servants to remove themselves from decision making if they have a conflict of interest or even the appearance of one.
- Expects public servants to be independent, impartial, and responsible to their fellow townspeople in their actions.
- Expects that the public servant's decisions and policies be made through the proper channels of government.

2. Definitions

Conflict of Interest – A situation or circumstance where a public servant's personal, pecuniary or financial interests have the potential to interfere with the proper exercise of a public duty.

Pecuniary Interest – Any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public at large, such as tax reduction or increased prosperity of the town.

Personal Interest – Interest in a matter, aside from official interest as a function of a public servant's position, which is more direct than that of the public at large and would influence the action of the public official.

Public Servant – All officers and employees of the Town, whether elected, appointed, paid, volunteer, or anyone acting in a position other than as a member of the general public. A person is considered a public servant upon their election, appointment, or designation as such, although they may not yet officially occupy that position.

Recuse – To remove or excuse oneself from participating in a specific action or discussion due to a conflict of interest. Recusal means to remove oneself completely from all further participation as a public servant in the matter in question. Public servants who have been recused shall immediately leave the room or shall seat themselves with the other members of the public at large who are present. When recused, public servants shall not participate in further discussions unless they clearly state for the record that they are doing so only as a general member of the public. A recused public official is effectively a member of the general public and shall not deliberate nor vote on the matter in question.

3. Code of Ethics

Public servants shall avoid conflicts of interest or even the appearance of a conflict of interest.

Public servants shall recuse themselves and shall not take part in the decision-making process of any matter before the town in which they have a personal or pecuniary interest. Members of the Planning Board and Zoning Board of Adjustment are further bound by the provisions of RSA 673:14.

Public servants shall not directly or indirectly solicit gifts or accept or receive any gift (whether in money, services, loans, travel, entertainment, hospitality, premises or in some other form), under circumstances in which it could be reasonably inferred that the gift was intended to influence them in the performance of their duties or was intended as a reward for any recommendation or decision on their part.

Public servants must not disclose or improperly use confidential information obtained in the course of their duties.

No public servant shall use town letterhead or stationary for any purpose other than official town business. Members of boards, committees, and commissions may only use town letterhead for purposes approved by their respective board, committee or commission.

No member of a board, committee, or commission shall speak on behalf of their respective board, committee or commission unless authorized to do so by their respective board, committee, or commission. This is not to suggest that individual members cannot speak publicly, but rather to emphasize that they should clearly state they are speaking only on their individual behalf and not represent himself or herself as speaking for the board, committee, or commission.

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