

So You Are Thinking of Running for Local Office ... GREAT!

It's probably the most challenging job you'll ever have (and the lowest paying). But it'll probably be among the most interesting and rewarding too.

For not only will the job ask you to be:

- A model of civility and cooperation
- An educator and interpreter of public opinion, and
- A leader bringing people together and building trust

It will provide you with the opportunity to shape policy governing the future of your town or city. In the course of doing so you will learn all the facets of local government including municipal law and finance.

If you are elected, however, life as you know it will change:

- You'll never eat at the local diner or stop by the hardware store without someone complaining about roads, taxes, etc. You will be cornered anywhere at any time on anything. Because, unlike elected officials at the state and federal level, you are in direct contact with the people who elected you on a *daily* basis.
- You'll spend a lot of time attending meetings, not only municipal meetings but regional and statewide ones as well. You'll also spend a lot of time preparing for them, reading the material that needs to be read in order to make an informed decision in the course of the meeting.

If you are elected, you will draw upon skills you already have and skills you never knew you had or wished you had. The job might require you to:

- Facilitate meetings, speak to the press, respond to angry and sometimes hostile citizens, testify before legislative committees, negotiate with contractors, bankers and engineers.
- Make decisions on everything from who to hire as the next manager, to which bid to accept for paving the roads, to how to pay for solid waste disposal, or whether to join with neighboring towns in a regional approach to providing for dispatch services.

A lot of what you will do depends on the form of government in your municipality and whether or not you have a manager.

Basically, local government takes two forms in Maine:

- There is the town meeting form, in which the town meeting not only passes laws, it also approves the budget, and elects the part-time board of selectmen that carry out the decisions made by the meeting. Of the hundreds of municipalities in Maine, over 85% of them are governed entirely by this form of government.
- Then there is the council form in which an *elected* or representative council, following public hearings, passes laws and approves the budget. About 15% of the municipalities are governed

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Click here to link to the **original *Maine Townsman* article**, published in March 1999, subtitled, "*A guide for elected official wannabes.*"

entirely or in-part by councils. In approximately one-third of these municipalities, a town meeting approves the budget.

While most councils are served by a manager, only about one-third of the town meeting communities are. It is important to understand the different roles played by elected officials and appointed managers.

- The council or board of selectmen make policy; it is the job of the manager to carry out that policy.
- The council or board of selectmen hire, supervise, and terminate the manager.
- In general, the manager hires, supervises and terminates other appointed municipal employees.

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Legal Background

Your term as an elected official will be more productive if you understand some basic law:

- **HOME RULE & MANDATES:**

Municipalities are not mentioned in the U.S. Constitution; they are the creations of state government. And while Maine's municipalities, as a result of an amendment to the Maine Constitution in 1970, enjoy a greater degree of autonomy (a.k.a. "home rule") than municipalities in many other states, actions taken at the state *and* federal level sometimes pre-empt those taken at the local level. For example, local governments in recent years have had to close down their landfills, build salt-sand sheds, and write comprehensive land use plans, to name a few of the state mandates coming out of Augusta. Then there are the water and wastewater requirements coming out of Washington. All this means is that as an elected official you will want to be aware of the limitations of home rule and get involved in the legislative process at *least* at the state level.

- **RIGHT TO KNOW LAW:**

Maine's "Right-to Know" Law was enacted in 1976 following the Watergate scandal to assure general public access to both the public proceedings and public records of government. The law strikes a three-way balance between the public's right to observe and review the conduct of public business, the municipality's responsibility to protect the confidentiality of certain matters and to retain competitiveness, and the individual's right of privacy. Among other things, the law requires that the public be given "ample" notice of public meetings, that they be allowed to attend and record the meetings provided they do not disrupt them, and that closed-door meetings a.k.a. "executive sessions" be limited to specific subjects.

- **CONFLICT OF INTEREST:**

Maine's "Conflict of Interest" Law describes four kinds of situations where official participation is prohibited:

A conflict of interest exists where an official has a personal financial interest in a matter of official business. (Your spouse is bidding on a road project.)

Incompatibility of office is present where two public offices, by virtue of their conflicting duties, can not be held by the same person. (You cannot simultaneously serve as the clerk *and* a selectman.)

Prohibited appointments include those paid positions off-limits to those who

created them or who increased their compensation. (You raised the police chief's salary and then applied for the job.)

Bias occurs when you cannot make a fair or impartial decision because of prejudice or a family relationship. (Your in-law has applied for the town manager's job.)

- **MAINE TORT CLAIMS ACT:**

Maine's Tort Claims Act provides a basic but not exclusive framework for determining what actions a municipality and its employees may be held liable for under state law.

The general rule regarding *municipal* liability is that immunity is the rule; liability is the exception.

When it comes to *municipal officials*, the general rule is just the reverse: immunity for the individual is the exception and liability is the rule.

For an indepth look at municipal liability issues, attend one of our Elected Officials Workshops, held (around the state) several times a year for newly elected officials as well as for veterans.

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Connecting Citizens with Government

Your term as an elected official will be more productive if you understand that a major part of your job is to inform and engage the citizenry.

- **PUBLIC MEETING & PUBLIC HEARINGS**

While both are considered "public proceedings," the public's role in them is quite different.

The public has a right to speak at a public hearing because that is the purpose of the hearing. And while the public may attend meetings of the council or board of selectmen, so-called public meetings, it has no automatic right to speak or in any other way participate in such meetings.

This is not to say that the public is to be excluded from a regular meeting of a council or the board of selectmen. Most municipalities allow for public input during such a meeting, usually scheduling it at the beginning; some even allow for comments at specific points during the meeting.

- **AGENDAS & MINUTES**

Municipal officers are *not required* to post an agenda or keep minutes of their meetings but they are required to give "reasonable" notice of the date, time and location of the meeting.

As to just what constitutes a public meeting, the law is quite clear: it is "the meeting of a body consisting of three or more persons" even if only two of the members plan to attend.

As regards agendas and minutes - law or no law - it's a good idea to have them.

Agendas keep everyone, including the public and the press, informed of what is to be taken up, giving structure to the meeting. Minutes bypass faulty memory and provide a written record of what was decided, when, and by whom.

○ **THE PRESS**

Not many residents will attend your meetings, but they will read the press' account of them. Therefore, as an elected official, you should develop a working relationship with the local press. *There is nothing more dangerous than an uninformed press.* Accept the fact that everything you say will be used by the press. That doesn't mean you should shy away from the press, or talk "off the record," or refuse to comment; it means you should be prepared to speak on the record and when you don't know the answer to a question, say so.

○ **NEWSLETTERS**

A growing number of municipalities in Maine are publishing their own newsletters as a way of better informing their residents about actions recently taken or about to be taken. Not only do these publications create an informed citizenry, they are said to create a sense of community as well.

○ **TOWN REPORTS**

Don't overlook the value of your town report. For many municipalities it's the only communications that residents receive. Think of ways to use it more effectively as a communication tool. Make it more reader-friendly. Include more charts, graphs and photos.

○ **PUBLIC ACCESS TELEVISION**

As they acquire the equipment and training from their local cable companies, a growing number of municipalities are airing their meetings *live* on cable television.

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Some Advice from the Veterans

Several years ago, some veteran municipal officials were contacted and asked to give some advice to newly elected officials -- the following are excerpts from the advice submitted:

■ **YOUR AUTHORITY IS COLLECTIVE**

As a member of the city council or board of selectmen, your authority is *collective*. That means you will have to speak in terms of the "council" or the "board" as in "the board decided to..." But remember you can only speak for the board or council when the board or council has spoken. As an individual you can not promise anything on behalf of the group.

■ **THE MAJORITY PREVAILS**

Most boards or council are made up of an odd number of members, so that when a vote is taken, one opinion - that of the majority - prevails. Votes should put differences of opinion to rest and end discussion and dissension.

■ **BE OPEN TO LEARNING & CHANGE**

Check your preconceived notions at the door. Seek to understand why things are done the way they are before jumping in to change them. There may be good reasons why some things are done the way they are. At the same time, you shouldn't go along with things just because that's how they "have always been done."

■ **DON'T COMPETE WITH YOUR COLLEAGUES**

You may have your spats, but you still have to live with each other. You have to have a working relationship with the rest of the board or council because, if you don't, if you each go your separate way, with each of you doing your own thing, you will become like a dysfunctional family, unable to accomplish anything.

■ **KEEP YOUR SENSE OF HUMOR**

Light-hearted bantering and quipping during meetings is sometimes good for what ails. Do what is right but try to have fun.

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Some of the Major Issues

While you will be required to address many issues unique to your community, there are several that affect most municipalities, including:

- **PROPERTY TAXES**

How to provide essential quality services while maintaining a reasonable tax rate will be one of your biggest challenges. You'll want to become familiar with the Homestead Exemption and the Maine Residents Property Tax & Rent Rebate Program (also known as the "Circuit Breaker" Program) which are designed to bring relief to some homeowners and renters. You'll also want to consider joining with neighboring municipalities in providing some services.

- **SCHOOL FUNDING**

The biggest item in your budget, it's an issue that often pits municipal officials against their counterparts in the school systems. How to increase state aid to education and how to enhance communication with local school officials are your biggest challenges here.

- **SOLID WASTE**

One of the highest costs to a municipality, after education. How to boost recycling rates in order to reduce disposal costs is another challenge you will face. Pay-by-the-bag is one of the tools employed by a growing number of municipalities to increase recycling and lower disposal costs.

- **ECONOMIC DEVELOPMENT**

Developing a diverse tax base along with jobs that provide a living wage is a growing issue among many municipalities, large and small. Tax Increment Financing, Community Development Block Grants, and regional initiatives are among the several tools at hand in this area.

- **CITIZEN APATHY/ANGER**

Some say they are one and the same. How to get citizenry positively engaged in the democratic process, be it turning out to vote, to voice an opinion at a public hearing, or to serve on the planning board. A lot will depend on your communication efforts be it through a live broadcast of your public meetings or a quarterly newsletter sent to all taxpayers.

Some Resources

- **MAINE MUNICIPAL ASSOCIATION**

A voluntary membership organization of dues-paying local governments in Maine that provides cities and towns with a variety of services:

- *Elected Officials Workshop.* These late afternoon workshops are held around the state several times a year for newly elected officials as well as for veterans. MMA staff will walk you through municipal law and other aspects of your new job. The workshop is just the tip of the iceberg: more than 70 workshops ranging from cash flow management to what the law says about pot holes are offered annually.
- *Municipal Officers Manual.* This is just one of numerous publications designed to help you learn and do your job. As a municipal officer, you will automatically receive the monthly *Maine Townsman* and the weekly (while the Legislature is in session) *Legislative Bulletin*.
- *Legal Department.* A team of attorneys, responding to thousands of calls and letters a year, is available to provide written and telephone advisory opinions to member municipalities.
- *MMA Web site.* Provides access to documents ranging from tax data, to legal packets, to sample contracts and job descriptions. The resources are but a password and click away at <http://www.memun.org>. Begin by visiting the publicly accessible municipal resources and then register for the members-only area when you are elected.

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State Law and Ethics

(from *Maine Townsman*, July 1990)

By Geoff Herman, MMA Paralegal

Maine law does not reach deeply into the area of municipal governmental ethics. Appropriately, the setting of ethical standards for municipal officials is left to the municipal legislative body, except for some minimum standards which are found in the statutes or which have been developed over the years by related court decisions.

There are essentially four ethics-related situations that can occur at the level of municipal government which are covered to some degree by various statutes or common law: conflict of interest, incompatibility of office, prohibited appointments or employment, and various provisions regarding 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 govern mental machine. The legal provisions governing conflict of interest or prohibited appointments/employment, on the other hand, are designed more deliberately to frustrate a municipal official from furthering his or her own self interest at the expense of the broader municipal interest.

Conflict of Interest

In a sense, all issues regarding governmental ethics boil down to the situation of the municipal official being motivated by conflicting or competing interests. Municipal officials are 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 an official is motivated to action as a result of a self interest rather than a common interest. The legal concept of "conflict of interest" as governed by statute, however, is limited to interests of a financial nature only.

30-A MRSA § 2605 is the statute which attempts to define the official who will be presumed by the law to be "self interested" when performing a particular governmental action, such as awarding a contract or voting in an official capacity on any question.

The standard found in § 2605 is essentially a 10% financial interest in the business or economic entity affected by a vote of a municipal board. The statute states that the vote of any municipal board can be vacated or voided by a court (which would occur upon complaint) when any official on that board votes on a question in which that official has a 'direct or indirect pecuniary (financial) interest A "direct or indirect pecuniary interest" in a vote is deemed to occur when the voting official has at least a 10% interest in the business to which the vote relates as an officer director, partner, associate, employee or stockholder.

It should be noted that it is not merely the "interested" official's vote which is voided or discounted, but the entire vote of the Board. In order to protect the Board's vote, the statute requires the "interested" Board member to (1) make a full disclosure of his or her interest before any action is taken, (2) abstain from voting on the matter, and (3) otherwise refrain from attempting to influence the Board's decision.

The 10% standard is not a terribly strict conflict of interest standard. If the "interested" official has only a 5% interest in the company affected by his or her vote, but that 5% interest represented many thousands of dollars, many people would perceive there to exist a conflict of interest. There are at least two other guidelines in the law concerning conflict of interest which have the effect of more strictly controlling the actions of interested municipal officials.

In 1989 the Legislature added a subsection to § 2605 which reads "every municipal and county official shall *attempt* to avoid the appearance of a conflict of interest by disclosure or by abstention." From this subsection it is reasonable to conclude that even when a municipal official does not meet the 10% interest test, but that official still possesses in the mind of the public a financial self interest in the outcome of a vote sufficient to impinge on his or her duty to serve the public's interest, then that official should either provide full disclosure or abstain, or both.

From a practical perspective, this subsection of the conflict of interest law, if it stood on its own, is more advisory than it is enforceable, both because the substantiation of an "apparent conflict could be extremely difficult and because any violation of this subsection carries with it no clear judicial remedy.

There exists, however, rather straightforward case law on this issue which further defines activity which may constitute a conflict of interest. That standard is "whether the town 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).

When the subsection in § 2605 which requires officials to attempt to avoid the appearance of a conflict is taken together with the conflict of interest standard defined in Lesieur there exists a sufficient body of law to suggest that even if the 10% financial threshold is not reached, the actions of municipal officers which are demonstrably guided by personal self interest could be held by a court to be without force.

Incompatibility of Office

In many cases one person may simultaneously hold more than one position or office in municipal government. Indeed, town and city managers frequently hold a dizzying number of offices in the performance of their duties.

There are certain positions in municipal government, however, which may not be held simultaneously by certain other officials. Although the concept of "incompatible offices" is often described as a 'conflict of interest', there is a significant difference between these two situations, particularly when viewed in the light of governmental ethics. 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 is also intended to assure uncompromised loyalty, but this time the tension is found to exist between the legitimate duties of two separate offices which no single individual - no matter how capable, well-intentioned or altruistically motivated could be expected to perform with undivided loyalty.

The common law (court cases) exerts more influence on determinations of incompatibility than do the statutes, which expressly define the following as "incompatible":

- A town manager may not simultaneously serve as either the town moderator, selectman, assessor or school committee member (30-A MRSA § 2632);

- A tax collector or treasurer may not simultaneously serve as either selectman or assessor (30-A MRSA §2526);
- A full-time deputy sheriff may not simultaneously serve as selectman, city councilor or budget committee member (30-A MRSA § 355);
- A county commissioner may not simultaneously serve as either the mayor of a city, selectman of a town, or assessor (30-A MRSA § 52);
- A municipal officer or his or her spouse may not simultaneously serve as a board of appeals member or associate (30-A MRSA § 2691);
- Finally, if the municipal planning board is still constituted under the "old planning board law" found in then-existing 30 MRSA § 4952, a municipal officer may not simultaneously serve as a planning board member. This particular incompatibility does not pertain to planning boards created or recreated after September 23, 1971.

As can be seen, incompatibility can be generally held to exist where two municipal offices, which are separated vertically with regard to authority, may have occasion to perform the same function or authorize its performance. The incompatible offices expressly defined in the statutes serve also to establish some criteria to determine other incompatibilities, which are not expressly defined in the law.

For example, the statutes do not allow a treasurer to simultaneously serve as a selectman because the treasurer prepares the municipal disbursements while the selectmen actually authorize the disbursements to be made.

In order to achieve a similarly healthy system of checks and balances, the offices of selectman and school committee member would be incompatible, even though they are not expressly incompatible by statute. A town manager is not permitted by statute to serve simultaneously as a selectman because, among other reasons, the decisions made by the manager are regularly *reviewed* by the selectmen, who are in many cases empowered to affirm, modify or reverse those decisions. Similarly, even in the absence of a specific incompatibility statute, a person could not simultaneously be the town's Code Enforcement Officer (CEO) and a member of the planning board where the planning board is structurally empowered to review and modify decisions of the CEO. Finally, the selectmen hire/fire and directly *supervise* the manager, and so the statutes define the two offices as incompatible. Similarly, if a town does not operate under a town manager form of government, the selectmen are authorized to directly supervise the road commissioner, and those two positions would therefore be incompatible by the common law doctrine.

It is often impossible to generalize a determination of office incompatibility. The duties and authorities of a particular office, as controlled by local ordinance or charter, frequently differ from one town to the next. Therefore, it is important that before deciding on incompatibility there is a determination of the duties and authorities actually vested in the two separate offices to be filled by one person. If it is found that the duties of one office holder serve the purpose of providing a check with regard to the duties of the other, or that the one office could review, modify or supervise the work of the other, then the two offices should not be simultaneously held by the same person.

Prohibited Appointments/Employment

From the point of view of governmental ethics, the statute governing prohibited appointments or

employment represents a return to the restriction on financial self-interest.

30-A MRSA § 2606 prohibits a municipal officer (a selectman or councilor) from being appointed to or employed in any "civil office of profit" in the municipal government when that position was either created or its level of compensation was increased during his or her term by action of its board of selectmen or town council. This prohibition extends throughout that officer's full term plus one calendar year thereafter. There is a similar prohibition for school committee members found in 20-A MRSA § 1002(3).

As is the case with much statutory law, § 2606 is either clumsy or broad enough not to care how the individual selectman might have voted on the salary increase, or whether the councilor is waling to accept the position at the original salary level; if the position was created or the position's salary increased by action of the board of municipal officers, then none of those officers are eligible for that position for their term plus one year. The dynamics of this prohibition are straightforward; the law suggests that people should not be tempted to create for themselves a position of employment by means of their elected office.

Bias

The issue of bias emerges in the area of the municipality's quasi-judicial functions. The issuance of permits or governmental approvals of any kind (such as land use, business, or concealed weapons permits) the awarding of bids or contracts, employment removal proceedings, or the appeal processes for those permitting, award, or removal procedures or other fair hearing processes (such as welfare fair hearings) all would fall under the category of quasi-judicial functions.

It is mandatory that quasi-judicial functions are performed by municipal officials who are capable of being completely objective, or "disinterested," with regard to the outcome of the proceeding. This requirement for disinterestedness flows primarily from the due process clauses of both the Maine and U.S. constitutions inasmuch as the decision making process due to an individual would not in fact be available to them if it were not an inherently fair process.

Obviously, if an official responsible for making a quasi-judicial decision had a financial self-interest in the decision, he or she would have a conflict-of-interest type bias and would therefore be unable to sit as a quasi-judicial officer.

Setting aside the financial type of bias, there are essentially two other types of bias. One of these types might be called *familial* bias, which is covered to some degree in Maine law, where one might expect there to exist a temptation of a family member to find in favor of the related applicant or claimant. The other type of bias might be called *prejudicial* bias, which can only really be recognized by the quasi-judicial officer him or herself, and where more often than not there is a temptation to rule against the applicant or claimant.

1 MRSA § 71(6) is a disqualification statute which reads "When a person is required to be disinterested or indifferent in a matter in which others are interested, a relationship by consanguinity or affinity within the 6th degree according to civil law or within the degree of 2nd cousins inclusive, except by written consent of the parties, will disqualify."

What this means is that when an official is sitting as a quasi-judicial officer to decide on a matter involving a relative by blood (consanguinity) or marriage (affinity) who is a second cousin or more closely related, the related official should either step down as a quasi-judicial officer or seek written

permission from all parties to the proceeding to remain.

In many of Maine's smaller communities, particularly, the invocation of this disqualification statute could significantly alter the voting membership of the planning board, for example, for land use proposals submitted by cousins, nephews or aunts or uncles of one or more planning board member.

What has been referred to as prejudicial bias is not subject to quantification on a consanguinity chart, although, like familial bias, it is also a bias of degree. It is entirely human to harbor some degree of positive or negative feelings toward other people, and a mere like or dislike of an applicant or claimant does not necessitate that a municipal official step down as a quasi-judicial officer.

On the other hand, a municipal official must abstain when there is a significant degree of bias for or against the applicant or claimant such that the official cannot make an impartial decision, thereby depriving the applicant of his or her due process right to a fair and objective determination. Because the presence of that degree of prejudicial bias can only truly be known to exist by the quasi-judicial officer, the decision to step down as a quasi-judicial officer for reasons of bias is a uniquely unguided, internal, and ethical decision most illuminative of a municipal official's sense of the public trust.

And from a purely practical perspective, even where extraordinary prejudice does not exist, but prior statements made by the municipal official might suggest the presence of bias, the municipal official might step down to avoid the appearance of making a biased quasi-judicial decision in order to remove one argument that could easily be used to subsequently challenge the municipal decision in a court appeal.

Summary

The municipality is, of course, free to strengthen by local code any of these guidelines found in the statutes and in common law governing conflict of interest, incompatible offices, prohibited appointments/employment, bias, or, for that matter, any other area of ethical concern.

In fact, in 1989 the Legislature added a section to 30-A MRSA § 2605 which authorized the municipal officers to adopt, at their discretion, an ethics policy governing the conduct of both elected and appointed officials. Even before this law was enacted, some towns had by charter already made some provisions relating to ethics. Despite the fact that the need for enabling legislation in this area is doubtful, it is probably more efficient to have either an ethics policy adopted by the municipal officers or a separate ethics ordinance than it is to have the municipal ethics policy entirely embedded in the charter, which requires a fairly major process to amend or revise.

