

## School Board Ethics and the Law Regarding Conflicts of Interest

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### A Word of Caution

This material is designed to provide Board Members with information about the law pertaining to conflicts of interest. This material does not cover every aspect of the law, and you are strongly encouraged to consult with your district's legal counsel regarding a specific case.

### Introduction

From time to time, citizens will run for school board who are either related by blood or marriage to employees of the school district. Such circumstances, if not properly handled by the Board and the elected member, will create adverse legal and ethical consequences for the Board and the member with regard to a conflict of interest. This White Paper provides advice to the Board and its members regarding the law on conflicts of interest arising from circumstances where a board member is related to a district employee.

### General Discussion of the Law

It is settled law that a school board member cannot be an employee of a school district.<sup>1</sup> NH RSA 671:18 states that:

*To become a candidate for any school district office, a person must be a registered voter in the district. No person holding the office of member of the school board shall at the same time hold the office of district moderator, treasurer, or auditor. No person employed on a salaried basis by a school administrative unit or by any school district within a school administrative unit shall be a school board member in any district of the school administrative unit.*

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<sup>1</sup> This law does not prohibit school board members receiving a salary which has been approved by the legislative body (the citizens). NH RSA 194:10 states, "At its annual meeting each school district shall determine the salaries of its school board and other district officers, and the district clerk shall certify the same to the selectmen."

*Salaried positions shall include, but are not limited to, the following: teacher, custodian, administrator, secretary, school bus driver (if paid by the district), school lunch worker and teacher's aide. (Emphasis added).*

Conversely, there is no prohibition against the spouse or relative of a person who is employed by the district serving as a school board member. That service however, is circumscribed by a number of legal and ethical considerations; the predominant one being that of avoiding real or perceived ethical conflicts of interest.

The oath of office is the primary contact point between a board member and the ethical standards established for their position. The oath, set forth in Part 2, Article 84 of the New Hampshire Constitution states in relevant part, “*I do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as [School Board Member] according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. . .*” NH Const. Pt.2. Art. 84.

There has long been a public, legislative and judicial view that when blood relations or married partners stand to potentially benefit from the decision of their spouse/relative/ public officer, that is a sufficient basis for a real or perceived conflict of interests. This idea is pervasive in the law. For example, a potential juror is disqualified from sitting on a case involving a spouse or relative. A Planning Board or ZBA member is required to recuse themselves from hearing any matter which they could not hear were they sitting as a juror.<sup>2</sup>

Our New Hampshire Supreme discussed the general law of conflict of interest in the context of Marsh v. Hanover, 113 NH 667, 672 (1973), a case where a fire chief appealed his termination which resulted from his off-duty employment by an ambulance service owned by his spouse:

*The common law of New Hampshire identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a direct personal and pecuniary interest. [Citations omitted] Such conflict normally arises in a context where an official is acting in a judicial or legislative capacity [citations omitted]. However, the general principle underlying this law applies to all public servants, [citations omitted] and hinges on the idea borrowed from the common law of trusts that those in public employment have an obligation to act solely in the interests of the cestui que trust – the public. [Citations omitted].*

On that basis, the Supreme Court found that the marriage of the fire chief to the CEO of a patient transfer service gave rise to a conflict of interest by virtue of the fact that her business competed with the public transfer service for the same dollar.

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<sup>2</sup> NH RSA 673:14 proscribes Planning Board/ZBA members from hearing any matter in which they have a direct personal interest or a pecuniary interest.

Board members with relatives who are district employees also need to exercise heightened care with regard to divulging confidential information. A town officer's divulgence of confidential information is sufficient grounds for their removal from office. In the same fashion, a school board member's divulgence of confidential information to a spouse or other employed relative, violates their oath of office and will constitute grounds for removal from office.

Most districts backfill against these risks by adopting ethics/conflict of interest policies. The NHSBA model policy BCA provides that “[t]he School Board will adopt a member code of ethics statement and annually each member will read, review and sign a copy of the statement to indicate agreement with the statement.” ConVal has adopted an ethics statement which contains the following pledge: “I will strive to: . . . Avoid being placed in a position of conflict of interest, and refrain from using my Board position for personal or partisan gain;”

Also instructive is NHSBA model policy Board Member Conflict of Interest BCB, which provides as follows:

*A Board member shall not have any direct personal and pecuniary interest in a contract with the School District, nor shall he or she furnish directly any labor, equipment, or supplies to the District.*<sup>3</sup>

*In the event a Board member is employed by a corporation or business or has a secondary interest in a corporation or business which furnishes goods or services to the School District, the Board member shall declare his interest and refrain from debating, discussing, or voting upon the question of contracting with the company.*

*It is not the intent of this policy to prevent the District from contracting with corporations or businesses because a Board member is an employee of the firm. The policy is designed to prevent placing a Board member in a position where his interest in the public schools and his interest in his place of employment (or other indirect interest) might conflict, and to avoid appearances of conflict of interest even though such conflict may not exist.”*<sup>4</sup>

This model policy seeks to articulate the principles set forth in the NH Supreme Court's Marsh decision. Board members must refrain from self-dealing and from making decisions that will appear to produce direct, or for that matter, indirect benefit, such as a benefit to a spouse or other relative.

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<sup>3</sup> A proper statement of the law would be “direct personal or pecuniary interest,” not “and” mirroring the stronger standard in NH RSA 673:14.

<sup>4</sup> The policy also contains an anti-nepotism policy permitting post election hiring of individuals related to Board members.

Certain City School Districts, such as the City of Manchester School District have further codified these common law ethical standards. For example, Section 9.03 of the City Charter provides the following standards:

- (b) *Appointment or employment of immediate family member. No city official shall participate in any way in any decision to employ or appoint any immediate family member to any city position nor any personnel action in connection with such employment or classified appointment. . .*
  
- (e) *No city official shall participate in the decision-making process of any matter in which the official or a member of the official's immediate family has a direct personal or financial interest. Any official who believes such an interest exists shall disclose such interest and shall not participate in the matter further. In the event any other official believes an official has a conflict, such conflict shall be disclosed to the city clerk who shall make a record of it. If the official does not believe such a conflict exists, the board of mayor and alderman, or school committee if the official is a member of the school committee, shall make a determination and if it finds a conflict exists, the official shall not participate in the matter further, or the appropriate board may refer the matter to the Conduct Board. (Emphasis added)*

These two standards codify the natural application of the common law standard discussed by the New Hampshire Supreme Court in Marsh v. Hanover.

### **Application of the Law**

A school district is a corporation. See NH RSA 194:1, 194:2. The Board members govern the corporation for the benefit of the state and the local citizens. The responsibilities of Board members include approving contracts, approving wage increases, handling personnel appeals, adopting policies, labor negotiations, passing on renewals, acting on nonrenewals, evaluating the superintendent, setting budgets, containing expenditures, approving expenditures, authorizing capital projects, designing the warrant, and the like. Each and every one of these decisions can indirectly affect a personal or financial interest of the Board member with a district-employed relative.

All Board members, but particularly members with employed relatives, need to ask the following questions before proposing, discussing, approving, opposing, or in any way acting upon a matter:

- Do I or any one in my immediate family have a personal or pecuniary interest in the outcome of this matter?**
- Will my participation in this action create the appearance of a conflict of interest?**

If the answer to either question is in the affirmative, the Board member should disclose the conflict of interest and immediately recuse themselves from any participation in the matter. Recusal means that the member intentionally refrains from any further public or nonpublic conduct which in any way relates to the decision at hand.

The following are just a few examples which illustrate clear conflicts of interest in the real world of “boardsmanship:”

A Board member should refrain from:

- negotiating the collective bargaining agreement in which a relative is part of the unit;
- voting on a collective bargaining agreement in which a relative is a member;
- voting on a salary increase for staff which will apply to a relative;
- approving the renewal of a relative;
- sitting on a personnel matter involving a relative;
- acting on any matter that will affect a relative’s working conditions;
- speaking to a district-employed relative about any matter that occurred in nonpublic session, even if that relative is a spouse;
- providing an employed relative with documents that are not in the public domain;
- asking an administrator to intervene on behalf of an employed relative;
- speaking to any administrator about a relative’s employment circumstances;
- advocating for an employed relative with the administration;
- mediating conflict between an employed relative and another employee;
- acting on a relative’s leave request;
- nominating a relative for a promotion;
- speaking to other board members in favor of an employed relative receiving a benefit of any kind;
- acting on a relative’s transfer;

- approving a capital expenditure that will directly benefit an employed relative, such as an office expansion or new computer equipment for that relative;  
and
- taking any adverse action against another employee for the perceived benefit of the related employee;
- taking any position which will place that relative's interests before the District's interests.

## **Conclusion**

Board members should use extreme care to avoid creating a conflict of interest between their duty to the school district and their affinity for an employed relative. The ethical solution is for a Board member to recuse themselves from addressing any matter which will create, or have the appearance of creating, a conflict of interest. The end result is that a Board member with a relative employed by the district will find their ability to serve the district curtailed to some extent by conflicts of interest.