

INFORMATION LIBRARY

Common Law Conflicts of Interest: Quick Reference

- Common law conflicts exist when a supervisor has a personal financial interest in a matter before that town, that is not a contract. Contract based interests are governed by statutory conflict of interest law.
 - Personal interest: an interest greater than that generally shared by town residents.
 - Financial interest (pecuniary interest): a gain or loss to the interested official.
- Only those with a vote on the matter can have a common law conflict of interest. Applies to supervisors, not to clerks or treasurers.
 - Applies to voting members of subcommittees like planning and zoning committees.
- Only the interested officer may decide if he or she votes or is disqualified. Other supervisors cannot prevent the interested officer from voting.
- Easy way to solve a common law conflict of interest is to abstain from the vote and discussion as a supervisor.
 - BUT, sometimes a Supervisor may be able to vote on a matter on which he or she has a personal financial interest if that person's vote is needed.
- Courts provided a 5-factor test to decide when a person with a common law conflict of interest may vote, despite the conflict. Interested officer should consider:
 1. the nature of the decision being made;
 2. the nature of the pecuniary interest;
 - Is there a financial interest and if so, what is it?
 3. the number of officials who have a financial interest in the matter;
 - There may be more than one interested official.
 4. the need, if any, to have interested persons make the decision; and
 - How many officers constitute a quorum? If the interested official abstains, are there enough non-interested officers remaining to form a quorum? If not, then the interested officers may need to participate just to reach a quorum to make a decision.
 5. the other means available, if any, such as the opportunity for review, that serve to ensure that the officials will not act arbitrarily to further their selfish interests.
- No penalties if the interested official's vote was not needed to reach a majority in the decision. For example, there is no penalty for an interested officer if on a board of three, he votes, and it is a 3 to 0 vote to approve the action. Even if the interested officer had abstained, the motion would have been approved. Thus, no conflict of interest.

Questions??? – Contact MAT or your Town Attorney for Help!