

***Does Vermont law prohibit a spouse or child of a selectperson from serving as an elected (or appointed) road commissioner in the same municipality?***

The short answer is no, it does not. The law says that road commissioners are appointed by the selectboard unless the municipality has voted to have the commissioner elected. 17 V.S.A. § 2646(16). The board could even appoint one of its own members. 17 V.S.A. § 2651(a).

In order to qualify for election to the position of road commissioner, the person needs to be a legally-qualified voter of the town, and therefore, a resident. There are no residency requirements for an appointed road commissioner. Vermont law on incompatible offices only states that the road commissioner (or his or her spouse) cannot also be an auditor. 17 V.S.A. § 2647.

Although there is no legal incompatibility in having a relative of the board as road commissioner, the selectboard member and the road commissioner should be mindful that the road commissioner has no independent authority to act, and can only carry out the orders of the board. 19 V.S.A. § 303. The easy part may be in getting the selectboard and road commissioner to agree on the commissioner's job responsibilities and authority. The difficulty arises when there is a disagreement over highway issues, job performance, or salary. At that point there may be either a real or a perceived conflict of interest on the part of the related selectboard member. In the worst case, the selectboard may want to remove an appointed road commissioner from office. But this can only be done if there is "just cause" and after "due notice" and a hearing. 17 V.S.A. § 2651.

In each of these difficult situations, the related selectboard member would be faced with the decision of whether or not to step down from the board while it works through the disagreement or determines the fate of the commissioner. Although there is a statutory disqualification for interest provision that applies to municipal boards when conducting a quasi-judicial or contested hearing (12 V.S.A. §61), there is not a statutory code of conduct to guide municipal officials. Some municipal governance charters contain codes of ethics. Also, courts have defined a conflict of interest as existing whenever a local official, by reason of a personal interest in the matter, is placed in the situation of temptation to serve his or her own purpose to the detriment of the town. One of the clearest general rules to follow is that if an official (or a close relative of the official) stands to gain financially in a matter, he or she should not take part in the matter. Another good test to determine if a conflict of interest exists is the "appearance of fairness" doctrine. This is a test of whether a disinterested person, having been apprised of a board member's interest in a matter being acted upon, would be reasonably justified in thinking a partiality exists. Some municipal boards have actually adopted their own rules of conduct or codes of ethics to guide them in making this determination. A few sample codes are available through the VLCT Municipal Law Center.

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