

CAN A SELECTPERSON ALSO SERVE ON THE PLANNING COMMISSION OR ZONING BOARD OF ADJUSTMENT/DEVELOPMENT REVIEW BOARD? CAN A SELECTPERSON SERVE AS THE ADMINISTRATIVE OFFICER?

Yes and yes. These are not statutorily incompatible offices. However, holding these dual positions presents multiple opportunities for the appearance of, as well as actual, conflicts of interest. While most of the conflicts discussed below are direct personal conflicts of interest for a selectperson, a direct financial conflict of interest can also arise in towns where the selectboard sets the compensation for town officers and employees. 24 V.S.A. § 933.

We'll take these dual positions in reverse order, starting with the **administrative officer**. State law expressly allows an administrative officer to "hold any other office in the municipality other than membership in the zoning board of adjustment or development review board..." 24 V.S.A. § 4448(a). Do not take this statutory permission as an endorsement, as opportunities for conflict abound. Examples may include:

- **Scenario:** Administrative officer is nominated by the planning commission and appointed by the selectboard. 24 V.S.A. § 4448(a). **Conflict:** Selectperson votes for him or herself as administrative officer.
- **Scenario:** Selectboard has the authority to adopt personnel policies governing the administrative officer's behavior, evaluate the administrative officer's performance, and remove the administrative officer at any time for cause after consultation with the planning commission and a public hearing. 24 V.S.A. § 4448(a). **Conflict:** Selectperson evaluates his or her own performance, lobbies and votes against his or her removal from office.
- **Scenario:** Selectboard is authorized by statute to settle lawsuits brought against the town in an appeal of an administrative officer's action or decision. **Conflict:** Selectperson votes against overturning his or her own action or decision as administrative officer.

The statutes are silent as to whether a selectperson may also serve on the **zoning board of adjustment (ZBA)/development review board (DRB)**. Therefore, the Municipal Assistance Center considers the practice permitted, but does not recommend it because of the following possible scenarios:

- **Scenario:** ZBA/DRB members are appointed by the selectboard. 24 V.S.A. § 4460(c). **Conflict:** Selectperson votes for him or herself as ZBA/DRB member.
- **Scenario:** Selectboard may remove ZBA/DRB member for cause, upon written charges and after public hearing. 24 V.S.A. § 4460(c). **Conflict:** Selectperson votes against his or her removal from the ZBA/DRB.
- **Scenario:** Selectboard has authority to represent the town in appeals to the Environmental Court and, in limited circumstances, may initiate an appeal of a ZBA/DRB decision as an interested person. **Conflict:** Selectperson votes against overruling a decision he or she approved or denied as a ZBA/DRB member.

Selectpersons in rural towns, by virtue of their office, are already nonvoting *ex officio* members of the **planning commission**. Again, state law does not prohibit selectboard members from

serving as full members of the planning commission so the Municipal Assistance Center considers it permitted, though not advised, because of the following possible scenarios:

- **Scenario:** Planning commissioners may be appointed by the selectboard. 24 V.S.A. § 4323(a). **Conflict:** Selectperson votes for him or herself as planning commissioner.
- **Scenario:** If appointed, planning commissioners may be removed at any time by unanimous vote of the selectboard. 24 V.S.A. § 4323(a). **Conflict:** Selectperson's vote blocks his or her own removal.
- **Scenario:** Selectboard may vote to adopt the town plan and/or bylaws. 24 V.S.A. § 4442(c). **Conflict:** Selectperson votes on the very town plan/bylaws that he or she had a hand in drafting and approving as a planning commissioner. 24 V.S.A. § 4325.

All of the above scenarios bring into question a selectperson's ability to impartially represent the public. For the other officers, questions arise as to their ability to impartially create, administer, and interpret a town's bylaws. Remember, too, that an appearance of conflict can be just as damaging to the public's faith in a town's system of zoning administration as an actual conflict.

As noted above, VLCT does not recommend that a selectperson hold any of these offices unless appropriate measures are taken to mitigate the impact of these potential conflicts. Such measures could include adopting a conflict of interest policy that requires a selectperson to recuse him or herself from all decisions involving his or her role as administrative officer, planning commissioner or ZBA/DRB member (with the caveat that the final decision of whether or not to recuse rests with the individual board member and cannot be compelled by other members of the board).

Finally, appropriate municipal panels (ZBAs/DRBs and planning commissions that exercise development review authority) must adopt rules of ethics with respect to conflicts of interest. Those rules could address the possible membership and participation of a selectperson. 24 V.S.A. § 4461(a).

Garrett Baxter, Attorney, VLCT Municipal Assistance Center

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