Ask MAC: Do Selectpersons Have to be Impartial?

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Not always – it depends on the context. Like all other elected officials at the local, state, or federal level, selectpersons are first and foremost politicians. Politicking involves finding common ground where it exists; engaging in horse trading; advocating for or against people, projects, and positions; and sometimes taking sides.

> There's a widespread misconception in local government that a selectboard must be impartial in all matters that come before it. This is simply not the case.

Context is key. Many people run for office because of something they want to accomplish or because of a particular issue that sparked their spirit of civic engagement. Publicly taking a position on an issue will generally not disqualify a selectperson from participating in a legislative (rulemaking) or executive (administrative) context so long as some unique benefit is not conferred upon them that is not afforded the rest of the general public. Bias – a preference or inclination that inhibits impartial judgment – typically only becomes a disqualifying factor when a selectperson acts in a quasi-judicial context (i.e., when it is acting like a court). Examples of when a selectboard serves in this role include when it's hearing a dog bite complaint or when it's sitting in judgment of a tax appeal as a member of the board of civil authority (BCA).

Bias may disqualify a selectperson from a quasi-judicial proceeding because the Vermont Supreme Court has ruled that people have the right to a "full, fair and impartial hearing before a tribunal that entertained no bias against them." Petitions of Davenport, 129 Vt. 546 (1971). Even then, Vermont courts presume that local officials act with "honesty and integrity," and this presumption can't be overcome by a bare allegation of bias. Not even prior statements by an official on a matter of local concern will, in and of themselves, demonstrate the level of personal bias or prejudice necessary to warrant an official's removal from the proceeding. The

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disqualification of a local official on the grounds of bias instead requires some evidentiary showing that the official is incapable of judging a case fairly on the basis of its own circumstances. In re: Judy Ann's Inc., 143 Vt. 228 (1983). Managing bias and the appearance of bias in the quasi-judicial context are important to not only protect parties' constitutional rights, but also to preserve the public's confidence in the administration of town business.

Outside of the quasi-judicial context, however, it's not so much bias that selectboards must concerns themselves with – as politicians, they're allowed to take positions on issues big and small, mundane or controversial; that's what they've been elected to do – as it is conflicts of interest. For more on that topic, please see our Ethics and Conflicts of Interest webpage.

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