

Tax Collector Workshop
The Ethical Administration of
Governmental Financial Resources

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Disclaimer

This presentation is intended for informational purposes only. It represents some positions on limited issues based on the law in effect at the time of the presentation and Department interpretation thereof, as well as the opinions and conclusions of its presenter.

For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.) for independent verification.

Duties of The Tax Collector

- **RSA 41:35, I Duties of Collector. –**
 - “Every collector of taxes shall keep in suitable books a fair and correct account in detail of the taxes due, collected, and abated, and of all property sold for nonpayment of taxes, which books shall be public records.”
 - “Failure to remit collections on a timely basis as required by this paragraph shall be cause for immediate removal from office under RSA 41:40.”
 - “He or she shall submit the tax books and lists to the treasurer and selectmen for inspection and computation when requested so to do and if they discover any errors therein they shall immediately notify the town auditors thereof; and the auditors shall promptly examine the collector’s records and make a written report to the selectmen and the department of revenue administration of their findings, conclusions, and recommendations.”
 - “The collector shall make a written report to the town at the end of each fiscal year”
 - “Upon written request therefor the collector shall provide the selectmen with an itemized list of the uncollected taxes at the end of the fiscal year.”

Supervision and Succession

- **41:36 Succession in Office.** – Whenever the term of office of a collector of taxes shall end . . . [t]he selectmen shall cause an audit of his accounts to be made promptly and they shall make and commit to his successor new warrants directing him to collect the taxes therein committed to him. All books, records and papers of the outgoing collector shall be delivered to the selectmen . . . and the selectmen shall deliver those needed for his work to the successor collector, and those not needed by the successor collector to the town clerk for care and preservation. . . .
- **RSA 41:38 and 41:45-c Deputy; Temporary Incapacity of Tax Collector** - The tax collector shall appoint a deputy, with the approval of the selectmen, who shall be sworn, give bond, have the powers of tax collectors and may be removed at the pleasure of the tax collector. The deputy shall perform such duties as are assigned to him by the tax collector.

Department of Revenue Supervision

- **RSA 41:39 Supervision by Commissioner of Revenue Administration.** – “The commissioner of revenue administration shall have and exercise general supervision over all tax collectors in the performance of their duties to the end that the laws relating to the collection of taxes may be properly administered.”

Removal of a Tax Collector

- **RSA 41:40 Removal of Tax Collector.** – “The governing body may institute proceedings to remove the tax collector from office whenever, upon examination by the department of revenue administration, a certified public accountant, or a public accountant licensed by the state under RSA 309-B, the accounts are found to contain an irregularity or material error, or show evidence that the timely deposit of funds has not been made in accordance with RSA 41:35.”

What are Ethics?

- Ethics are knowing what you ought to do.
- Doing the right thing depending on well-established standards of behavior.
 - **The Golden Rule:** Treat others the way you would like to be treated.
 - **Would you do it if your mother was watching?**
- *“Relativity applies to physics, not ethics.” – Albert Einstein*

Why Do Ethics Matter?

TRUST

Ethical Decision-Making Invites
Respect, Trust and Confidence in the Government.

“It takes 20 years to build a reputation
and
five minutes to ruin it.”

Warren Buffett

Respect, Trust, and Confidence *of the Public*

- The public pays close attention to financial resources — they look very closely at the integrity of individuals in government financial positions.
- Demonstrate and be dedicated to the highest ideals of honor and integrity.
- Even the appearance of unethical behavior can damage your reputation.

Respect, Trust, and Confidence *of the Public*

- It only takes one charge of impropriety ...
 - To taint your career; and
 - To damage the reputation of the municipality you represent.
- Even if you are cleared of wrongdoing, public mistrust of both you and the municipality can linger indefinitely.

GUIDANCE



Published Rules of Ethics
Own Personal Sense of Morality
Constitution and Statutes

Published Rules of Ethics

There is No “New Hampshire” Code of Ethics Specifically for Tax Collectors

- **Government Finance Officers’ Association (“GFOA”)** www.gfoa.org/code-of-ethics - standards of integrity, responsibility, accountability, and disinterested conduct
- **New Hampshire Government Finance Officers Association:**
www.nhgfoa.org/sites/g/files/vyhlf976/f/uploads/code_of_ethics.pdf
- standards of integrity, responsibility, accountability, and disinterested conduct.
- **New England Government Finance Officers Association:**
<https://nesgfoa.org/wp-content/uploads/2019/06/NESGFOA-Code-of-Ethics-Policy-June-7-2019-Final.pdf>
- standards of integrity, responsibility, accountability, and disinterested conduct
- **Maine Municipal Tax Collectors’ and Treasurers’ Association** - Standard of Ethics and Professional Conduct: www.mmtcta.org/about/by-laws-ethics
- integrity and prudence in the management of funds, do not condone illegal activity.

New Hampshire Government Finance Officers Association suggests Government finance officers adopt these

Personal standards:

1. Demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships *to merit the respect, trust, and confidence ... of the public.*
2. Devote their time, skills, and energies to their office both independently and in cooperation with other professionals.
3. Abide by approved professional practices and recommended standards.

Source: New Hampshire Government Finance Officer Association: Administrative Policy – Subject: Code of Professional Ethics Policy. Adopted Dec. 2, 2007; Reviewed January 9, 2014.

New Hampshire Government Finance Officer Association suggests adopting these

Public Official standards :

1. Recognize and be accountable for their responsibilities as officials in the public sector.
2. Be sensitive and responsive to the rights of the public and its changing needs.
3. Strive to provide the highest quality of performance and counsel.
4. Exercise prudence and integrity in the management of funds in their custody and in all financial transactions.
5. Uphold both the letter and the spirit of the constitution, legislation, and regulations governing their actions and report violations of the law to the appropriate authorities.

Source: New Hampshire Government Finance Officer Association: Administrative Policy – Subject: Code of Professional Ethics Policy. Adopted Dec. 2, 2007; Reviewed January 9 2014.

CONSTITUTION AND STATUTES

New Hampshire Constitution

Part 1, Article 1 New Hampshire Constitution

Article 1. [Equality of Men; Origin and Object of Government.] All men are born equally free and independent; Therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.

This means: Duty to Provide Meaningful Assistance

Municipal officers are required to provide meaningful assistance to all citizens who seek their help in resolving municipal-related issues. The town and its agents must operate in good faith.

See Carbonneau v. Town of Rye, 120 NH 96 (1980); Savage v. Town of Rye, 120 NH 409 (1980).

SUPREME COURT: *“We remind the town that it is their function to provide assistance to all their citizens. We strongly suggest that the town of Rye quickly get in the business of attempting to negotiate a workable plan acceptable to both parties. The town’s apparent unwillingness to engage in such discussions to date leads us to question seriously whether it is dealing in good faith.”*

Oath of Office - Required

Every town officer is required to take the oath of office prescribed in Pt. II, Article 84 of the NH Constitution:

See these Statutes:

669:9 Oaths of Town Officers.

All town officers elected as provided in this chapter shall take an oath of office as provided in RSA 42 before qualifying for office.

42:1 Oath Required. – Every town officer shall make and subscribe the oath or declaration as prescribed by part 2, article 84 of the constitution of New Hampshire and any such person who violates said oath after taking the same shall be forthwith dismissed from the office involved.

49-C:28 Oath of Office. – Every person elected or appointed to any city office before entering upon the duties of his office shall take and subscribe to an oath of office, as provided by law, which shall be filed and kept in the office of the city clerk.

Article 84. Oath of Civil Officers – required by RSA 42:1

I, A. B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. [So help me God. OR This I do under the pains and penalties of perjury.]

I, A. B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as _____ , according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. [So help me God. OR This I do under the pains and penalties of perjury.]



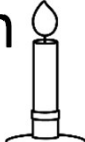
Abiding by the Oath of Office – means acting :

- **Faithfully** - remaining true to one's promises, allegiance, affection;
- **Impartially** - treating or affecting all equally;
- **To the Best of my abilities** - as well as I am able;
- **Agreeably to the Rules** – lawfully, within the laws and rules.



Personal ETHICS CHECKLIST

Bell · Book · Candle

- 1. Does this action sound right??** Are there warning signals sounding? *The Bell* 
- 2. Is this action consistent with the law, the rules and policies??** Is there anything that restricts your choices? *The Book* 
- 3. How will this action look to others when exposed to the light of day??** Could a reasonable person conclude that you acted correctly? *The Candle* 

Source: Michael Josephson. The Josephson Institute for Ethics

CONFLICTS OF INTEREST

NH Legislature defines conflict of interest:

RSA 21-G21, II

“Conflict of interest” means a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.

95:1 Public Officials Barred From Certain Private Dealings.

No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property of a value in excess of \$200 at any one sale to or from the state or political subdivision under which he holds his public office.

CONFLICTS OF INTEREST

Public office is a Public Trust – the town is your client; you must serve in the town’s best interest and for the equal good of all members of the community within the rules of law.

General Rule: a conflict of interest will be found when an official has a personal or financial interest in the outcome more than the average taxpayer.

NH Supreme Court explained in Atherton v. Concord:

“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.”

CONFLICTS OF INTEREST

New Hampshire Government Finance Officers Association suggests Government Finance officers shall:

1. Actively avoid the appearance of or the fact of conflicting interests.
2. Discharge their duties without favor and shall refrain from engaging in any outside matters of financial or personal interest incompatible with the impartial and objective performance of their duties.
3. Not, directly or indirectly, seek or accept personal gain which would influence, or appear to influence, the conduct of their official duties.
4. Not use public property or resources for personal or political gain.

Source: New Hampshire Government Finance Officer Association: Administrative Policy – Subject: Code of Professional Ethics Policy. Adopted Dec. 2, 2007; Reviewed January 9, 2014.

CONFLICTS OF INTEREST

Statutes

NH RSA 21-G:22 -- Conflict of Interest.

Executive branch officials and classified employees shall avoid conflicts of interest. Executive branch officials and classified employees shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.

- applies to State of New Hampshire officials and employees
- should be used as guidance for how municipal employees should conduct themselves

CONFLICTS OF INTEREST

Case Law

Atherton v. Concord, 109 N.H. 164 (1968)(a conflict of interest exists if the government official has a direct or indirect financial interest in the outcome greater than other citizens or taxpayers).

In re City of Berlin BTLA Docket No: 29285-19OS (March 17, 2021) - assessors each recused himself individually and voted to grant each other's tax abatement requests shortly after the town had increased its property tax rate.

- As an officer of the town, you owe a fiduciary duty to the taxpayers. You are prohibited from putting your “own interests above those of the people that you serve.”
- Board of Tax Appeals held that the appearance of impropriety called for remedies. Must avoid even the appearance of impropriety in their conduct.

Criminal Statutes related to financial gain:

Class B felony = prison up to 7 years; Misdemeanor = prison up to 1 year.

- **RSA 640:2 II - Public Servant** - As used in this section and other sections ... (a) "Public servant" means any officer or employee of the state or any political subdivision thereof, ... performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position....;
- **RSA 640:2 Bribery** – felony to offer, give, solicit or accept pecuniary benefit to influence a government official;
- **RSA 640:4 Compensation for Past Action** – misdemeanor to accept or agree to accept pecuniary benefit for having given a decision, opinion, recommendation, or otherwise exercised his discretion, or violated his duty.

Criminal Statutes (cont):

- **RSA 640:5 Gifts to Public Servants** - misdemeanor to solicit, accept or agree to accept pecuniary benefit from a person who is or is likely to become subject to or interested in any matter pending before the governmental body with which he is affiliated;
- **RSA 640:6 Compensation for Services.** - misdemeanor to solicit, accept, or agree to accept pecuniary benefit for advice or assistance regarding a transaction the government official is likely to have an effect on or discretion over.
- **RSA 640:7 Purchase of Public Office.** - misdemeanor to solicit, accept or agree to accept, pecuniary benefit for his endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant.

CONFLICTS OF INTEREST

City/Town may have More Stringent Conflict of Interest Policy

RSA 49-A:82 – FORMER CITY CHARTER STATUTE

Said that no city official shall take part in a decision in which he or she has a financial interest “greater than any other citizen or taxpayer.”

RSA 49-C:33 – Optional Provisions; Limitations.

I. City charters may include provisions relating to any or all of the following matters:

* * *

(c) Conflicts of interest so long as any provisions adopted are at least as stringent as the state general laws relative to conflicts of interest.

RSA 31:39-a – Conflict of Interest Ordinances.

The legislative body of a town or city may adopt an ordinance defining and regulating conflicts of interest for local officers and employees, whether elected or appointed. It may require disclosure of financial interests, establish incompatibility of offices and establish conditions for removal from office.

CONFLICT OF INTEREST cont.

- Be aware of your City or Town's Conflict of Interest Rules
- Remember that even the Appearance of a conflict undermines the respect, trust, and confidence of the public.
- You are in a position of public trust. You must:
 - Act in the best interests of the public;
 - Put the public's interests before your own; and
 - Recuse yourself if necessary to avoid a conflict or to avoid the appearance of a conflict.
- A charge of conflict of interest goes to the heart of the people's trust in government.

Source: New Hampshire Government Finance Officer Association: Administrative Policy – Subject: Code of Professional Ethics Policy. Adopted Dec. 2, 2007; Reviewed January 9, 2014.

INCOMPATABILITY

669:7 Incompatibility of Offices. –

I. No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent.

* * *

I-a. No person shall at the same time file a declaration of candidacy for any 2 or more elected offices that are incompatible under paragraph I.

Purpose is to avoid inconsistent loyalties and maintain internal controls so different people hold different financial functions.

Your Town or City may have additional incompatibility rules.

More Corrupt Practices

- **RSA § 641:7 Tampering with Public Records** – misdemeanor to knowingly make a false entry in or alteration to a government record; or present a record as genuine knowing it to be false.
- **643:1 Official Oppression.** – misdemeanor to benefit yourself or to harm another, by committing an unauthorized act which purports to be an act of your office; or refrain from a duty of your office. (RSA 80:76 – governing body decides when not to accept tax lien.)
- **643:2 Misuse of Information (eg. insider dealing)**-misdemeanor if, knowing official action is contemplated or relying on info. acquired as a result of your office, you: I. Acquire or divest a pecuniary interest; or II. Speculate or wager on the basis of such action or information; or III. Knowingly aid another to do so.

Ethics Complaints

Allegations of criminal misconduct by a municipal public official are reported to:

- The Public Integrity and Economic Crime Unit of the Office of the Attorney General, or
- The relevant County Attorney.