

MINUTES

Selectmen's Meeting - Town Office

Thursday, May 9, 2019 - 6:00 PM

Richard Eastman
Thomas Klinepeter

Richard Murray III
Kimberly Clarke

Thomas Kingsbury

1. Selectman Eastman called the Selectmen's Meeting to order and declared a quorum at 6:00 PM.
2. Selectman Eastman led the Pledge of Allegiance.
3. New Business:
 - a. Tabled action on Selectmen's Meeting minutes of April 24, 2019.
 - b. Ron Smith, RHR Smith & Company reported on June 30, 2018 Audit. Ron reported the Town is in the best financial state in all the years he has been auditing in Fryeburg.
 - c. Tabled meeting with the Denmark ATV Club. They will reschedule at a later date.
 - d. Ira Ela was introduced as the new Public Works Director. Department Head reports.
 - e. Motion by Selectman Eastman, second by Selectman Clarke to appoint Peter O'Brien to the Age Friendly Community Task Force. Vote 5-0.
 - f. Motion by Selectman Eastman, second by Selectman Murray to appoint Brenda Leavitt to the Mt. Washington Valley Economic Council from May 1, 2019 through May 1, 2020. Vote 5-0.
 - g. Motion by Selectman Eastman, second by Selectman Kingsbury to sign the Warrant and Notice of Election to Call Maine School Administrative District No. 72 Referendum. Vote 5-0.
 - h. Motion by Selectman Eastman, second by Selectman Kingsbury to approve a Land Purchase Installment Contract for Christine and Chris Drouin. Vote 5-0.
 - i. A discussion was held concerning the Sidewalk Inventory done by Selectmen Eastman and Kingsbury with more discussions to be scheduled.
 - j. Motion by Selectman Eastman, second by Selectman Kingsbury to approve the June 11th and 13th Town Meeting Warrant. Vote 5-0.
 - k. Information on Incompatible Positions and Conflict of Interest was given to the Selectmen.
 - l. The Selectmen reviewed the draft of the Ad for the Town Manager position and a draft from Selectman Clarke. The Manager was asked to combine information and submit a final draft to David.
 - m. Motion by Selectman Eastman, second by Selectman Murray to accept a Byrne Jag Grant for Police computers in the amount of \$2,391.98. Vote 5-0.
4. Motion by Selectman Eastman, second by Selectman Kingsbury to accept the Town Manager's Report. Vote 5-0.
5. Other business as appropriate.
 - a. Selectman Kingsbury presented pictures showing gun shots fired at the Road Closed sign on Porter Road. Selectman Eastman spoke about the cutting at Round Pound that was done by the Airport. Selectman Murray reminded drivers that the speed limit signs have

been reduced to 35 MPH from Stanley Hill on Route 302 for the construction areas and Haleytown Road intersection is now a T.

6. Public Forum. Judy Redding brought in a tattered and ripped flag that was on her father's grave.
7. Motion by Selectman Eastman, second by Selectman Klinepeter to approve Payroll Warrants #95, #97 and Accounts Payable Warrants #96, #98. Vote 5-0.
8. Motion by Selectman Eastman, second by Selectman Klinepeter to adjourn at 7:10 PM. Vote 5-0.

Date:

5/23/19

Richard Eastman

Richard Eastman

Thomas Klinepeter

Thomas Klinepeter

Richard Murray

Richard Murray

Kimberly Clarke

Kimberly Clarke

Thomas Kingsbury

Thomas Kingsbury

Sharon Jackson

From: Legal Services Department <legal@memun.org>
Sent: Wednesday, May 08, 2019 10:18 AM
To: 'townmanager@fryeburgmaine.org'
Subject: RE: Fryeburg - Legal Information Request - Conflict of Interest

Sharon,

In my response, I am going to address the rules under state law. The town could have an ethics ordinance or policy that has stricter rules and requires abstentions even where state law does not. If you have a local ethics ordinance or policy, let me know.

Generally, we don't feel that it is a conflict of interest or incompatibility for a selectperson (or planning board member or anyone else) to be on the budget committee (assuming any budget committee ordinance does not say otherwise). This is because generally speaking, budget committees have no authority to take any formal actions. They are purely advisory and only vote on recommendations on budget articles. The town meeting is the entity that actually appropriates the money under those articles. Certainly, someone could abstain from a vote that impacted his/her department to avoid an appearance of a conflict, but I don't think state law requires it. See a Legal Note that goes into more detail: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/194/Who-Can-Serve-on-a-Budget-Committee>

The general rule stated above for budget committees would apply to most advisory committees, especially when it involves proposing warrant articles for the town meeting to vote upon.

Generally, when a selectperson is involved in a vote on the budget of a program that he/she is part of, there would not be a legal conflict of interest that would prevent the person from voting on a budget proposal. This primarily because the budget article is only a proposal and the town meeting will actually make the appropriation. There are situations where a selectperson might be required to abstain on issues involving his/her finances, such as voting to approve a disbursement warrant for his/her own payroll, but probably not with respect to a budget proposal. Again, this is an area where the town can have a stricter conflict rule in an ethics policy or ordinance. Moreover, the reality is that the public does not generally understand technical legal distinctions between a budget proposal and a budget decision. The public often does see a conflict of interest when a program budget is proposed that a selectperson is part of, especially if the proposal includes a compensation proposal. So, very often board members do abstain to avoid an appearance of conflict and preserve the public's confidence, and Maine law encourages board members to do so to avoid an appearance of a conflict.

Please let me know if you have any questions.

Susanne F. Pilgrim, Esq., Director
Legal Services Department

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legal@memun.org

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From: Webmail
Sent: Tuesday, May 07, 2019 11:08 AM
To: Legal Services Department <legal@memun.org>
Subject: Fryeburg - Legal Information Request - Conflict of Interest

Legal Services - Web Member Inquiry - Sharon Jackson - Fryeburg

Municipality	Fryeburg
Subject	Conflict of Interest
Full Name	Sharon Jackson
Title	Town Manager
Email Address	townmanager@fryeburgmaine.org
Telephone	935-2805
Fax Number:	935-6008
Address	16 Lovewell Pond Road
City/ Town	Fryeburg
Zip	04037

Comments:

Subject: Selectmen serving on Municipal Committees We have a Selectmen who was appointed by the Selectmen to serve on our Conservation Committee. At a recent Selectmen's meeting when the Selectmen were voting on department and committee budgets, the Selectman who was serving on the Conservation Committee was told by the Selectmen Chair that she could not vote on the CC budget because it was a conflict of interest. She stated she was an unpaid volunteer for her committee work with no financial interest in any of the committee's projects that she should have been able to vote. We have a selectman who is also a fireman and he abstains from voting on the fire department budget. The Chair of the Planning Board is also the Chair of the Budget Committee and as as Chair of the Budget Committee he abstains from voting on the Planning Board budget. Is a Conflict of Interest only created when financial compensation is received by an individual or their family member? What creates a conflict of interest or the appearance of a conflict of interest. I have been asked to obtain an opinion for the selectmen's meeting Thursday night. Thank you. Sharon

Memorandum To: Rick Eastman, Chairman, Fryeburg Select Board

Sharon Jackson, Fryeburg Town Manager

From: Kimberly Clarke, Vice Chairman, Fryeburg Select Board

Date: May 6, 2019

Subject: Legal Opinion on Select Board Members Serving on Municipal Committees

At the Select Board meeting on April 25, I was not permitted to vote on the Conservation Committee's budget as it was stated that my role as a member of the Conservation Committee created a conflict of interest. I respectfully request a legal opinion in this regard as I believe this to be incorrect. There are numerous examples of Select Board members serving on both Ad Hoc and Standing Municipal Committees and then voting on initiatives or projects proposed by those committees.

It is my understanding that a conflict of interest is created when financial compensation is received by an individual, their spouse or immediate family member. For example, if I owned a company that wanted to bid on clearing a path in the town forest as part of the Conservation Committee's trail project, then that would create a conflict of interest. A conflict of interest is not created by either participating in or leading Committee discussions about projects or proposals developed by those Committees for the benefit of the town. Especially as the Committees must come back to the Select Board as a whole for approval before any money can be spent on Committee projects.

If a Select Board member is prohibited from voting on any proposal that comes out of a Committee on which they serve, then it is highly doubtful any member of the Select Board will sit on any Committee in the future. This cannot be in the best interest of the town.

In stating that I should not vote on the Conservation Committee's budget, the example was given of Select Board member, Tom Klinepeter, who abstains from voting on the Fire Department budget. That is not a good example as Klinepeter is compensated for the hours he is on the clock for the Fire Department and so does have a financial conflict.

I was an unpaid volunteer for my Committee work with no financial interest in any of the two Committees' projects on which I served.

Until this is resolved, I have resigned from all of my Municipal Committee memberships including the Conservation Committee and the Age Friendly Community Task Force.

In requesting the legal opinion, I would appreciate it if you would please include this memo in the transmittal to the town's attorney. Thank you.