

## Motion seeking injunctive relief

Petitioner:

Mark R. Acciard  
6 Christine dr.  
Atkinson, NH. 03811

v.

Respondent:

Phillip V. Consentino  
Selectman/Police Chief/Elderly Affairs Director  
Town of Atkinson, NH  
Town Hall, Academy Ave.  
Atkinson, NH. 03811

I respectfully seek injunctive relief from the blatant conflict of interest in the respondent discussing, deliberating, and voting upon police, elderly, and employee affairs, as Selectman; in clear violation of the Town Code of Ethics Ordinance. My reasons for seeking this are as follows:

° Respondent in possession of a letter from NHMA dated March 1, 2004, rendering legal opinion on the issue of conflict of interest inherent in the current make-up of the Board. Said letter clearly states; *Since interest includes employer/employee relationships under the Atkinson ordinance, it is a violation of the Atkinson Code of Ethics ordinance for a selectman who is an employee of the town to vote on employment issues in which he has an interest.* (disjoin) *under both the towns ordinance and under the common law principles of conflict of interest, the salary and benefits of the police chief and, in some circumstances, personnel policies of the town, do, in fact pertain directly to Selectman Consentino, and, therefore he should disqualify himself from deliberating and voting on those issues.* (disjoin) *Therefore, under the town ordinance, a selectman who is also a town employee cannot vote on wages, benefits, or employee policies that affect all town employees.* (disjoin) *The New Hampshire Supreme Court said that a public official could vote on a matter in which his interest "was the same as any other citizen". a selectman who is a town employee may have an interest in a matter which is the same as any other town employee but that is not enough to absolve him or her of a conflict of interest. Only when the interest of the public official is the same as that "of any other citizen" may that public official vote on the matter.* (disjoin) As far as requesting more specificity regarding alleged infractions of our code of ethics ordinance; the ordinance defines interest as; **acting as an agent, or holder of fiduciary interest. As police chief, Selectman Consentino holds fiduciary interest over the police dept., this precludes him from deliberating upon police matters, let alone voting upon them.** Also interest is further defined as **any present or past employer/employee relationship(within the last 12 months).** In this regard Selectman Consentino is BOTH

employer AND employee.

◦ While in possession of this opinion the Respondent chooses to ignore the law, still reporting and voting upon police matters from the Selectman's chair, even going so far as to put two new nameplates on his Selectman's desk; Police Chief and Elderly Affairs Director; for the benefit of the public during selectman's meetings; and also as **Police Chief presenting a request to the Selectmen to withdraw funds from the police donation account, and as Selectman opening a public hearing on this matter, and voting to approve his own request!**

◦ While in possession of this legal opinion from NHMA he voted upon payraises for town employees, and adopting a tenure bridging policy that **affect all town employees including himself.**

◦ Town code of ethics complaint filed against the above-mentioned incidents. COE committee held (investigated?) complaint for 88 days, ignoring the legal opinion from NHMA (one of only two authorized sources of legal advice to town boards or committees) to seek outside legal opinion in contravention of NHMA's. COE will not disclose who provided the opinion, or what it cost, or how it was paid for.

◦ Code of Ethics Committee violated the confidentiality of their office, by making their deliberations public, by sending a copy of their decision (including the complainant's name and address) to both the Board of Selectman AND Selectman Consentino. Under RSA 42:1(a) this could result in their removal from office.

◦ At the Selectman's meeting on Oct. 20, 2003, Selectman Consentino stopped the opening of the Cleaning Bids, stating publicly that he was going to remove the police station from the bid process because he would get trustee to clean it thereby saving the town money. The Board approved, then Police Chief Consentino awarded a contract privately to another cleaning company run by a long time friend.

◦ The Atkinson Code of Ethics Ordinance defines Conflict of interest as: *A situation, circumstance, or financial interest which **has the potential** to cause a private interest to interfere with the proper exercise of the public duty.* The Ordinance defines Interest as: *acting as an agent or holder of fiduciary responsibility; or: any present or past (within the last 12 months) Employer/Employee relationship.* As Police chief when Chief Consentino presents a request to the Board of Selectmen he is an agent and holder of fiduciary responsibility of the Police Dept. for him to then grant his own request as Selectman, is a clear conflict. He is also BOTH employer as selectman, AND Employee as police chief and elderly affairs director.

° The Atkinson Code of Ethics Ordinance defines Prohibited Conducted as: *(1) In his official capacity to introduce, discuss, deliberate, approve, or vote upon any matter in which he or any member of his family has an interest. (2) Knowingly enter into any discussion, testimony, or deliberation without first, publicly, and for the record, stating all interests, dealings, relationships, and **possible conflicts of interest that may exist** between said members, their family, the principles, and the issue before them.*

For these reasons I believe that it is clearly unethical for ONE MAN to make requests of the town as police chief then grant those same requests as selectman. I believe that the honorable thing to do would be to recuse himself from discussions dealing with police, elderly or town employee issues. And I am seeking injunctive relief from these actions.