## EXECUTIVE SUMMARY

**Voting and debate conflicts in the Legislative setting are very narrow and restricted to those situations where a Senator has a direct and immediate interest.**

**The right of members to represent their constituencies is of such major importance that members should be barred from voting on proposals of direct personal interest only in clear cases and when the proposal is particularly personal.**

**Accordingly, Senate Rule 71 has generally been interpreted so that if a vote would affect both a legislator and a larger group of people, the legislator is not required to recuse themselves because the vote is not of "immediate or direct interest."**

## ANALYSIS

### I. CONSTITUTIONAL BACKGROUND

The Vermont Constitution controls the operation and structure of State government; all governmental authority flows from it – and our Constitution provides the principles for how representative government must operate.

The Vermont Constitution created a government for the common benefit of the people, and legislators take an oath to act on their behalf as faithful, honest guardians.

#### The Common Benefits Clause

The Common Benefits Clause, Vt. Const. Ch. I, Art. 7 provides:

> That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community[.]

#### Legislators May Not Act As Lobbyists

Vt. Const. Ch. II, § 12 prohibits members of the General Assembly from receiving fees for advocating bills:

> No member of the General Assembly shall, directly or indirectly, receive any fee or reward, to bring forward or advocate any bill, petition, or other business to be transacted in the Legislature; or advocate any cause, as counsel in either House of legislation, except when employed in behalf of the State.

The term "legislative counsel" used in the law at least until mid-1970s meant what is today known as a paid "lobbyist."

## Legislators' Oath of Office

Vt. Const. Ch. II, §§ 12 and 17 provides the Legislators' Oaths of Office:

> I do solemnly swear (or affirm) that as a member of this Assembly, I will not propose, or assent to, any bill, vote, or resolution, which shall appear to me injurious to the people, nor do nor consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State; but will, in all things, conduct myself as a faithful, honest Representative and guardian of the people, according to the best of my judgment and ability. (If an oath) So help me God. (Or if an affirmation) Under the pains and penalties of perjury.
>
> I do solemnly swear (or affirm) that I will be true and faithful to the State of Vermont, and that I will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof. (If an oath) So help me God. (Or if an affirmation) Under the pains and penalties of perjury.
>
> I do solemnly swear (or affirm) that I did not at the time of my election to this body, and that I do not now, hold any office of profit or trust under the authority of Congress. (If an oath) So help me God. (Or if an affirmation) Under the pains and penalties of perjury.
>
> I do further solemnly swear (or affirm) that I will support the Constitution of the United States. (If an oath) So help me God. (Or if an affirmation) Under the pains and penalties of perjury.

The oath of office is a guiding principle for conduct as a Representative.[1]

---

[1] Note the words "office of profit or trust under authority of Congress" (defined in the Constitution at Chapter II, §17) is "construed to mean any office created directly or indirectly by Congress, and for which emolument is provided from the Treasury of the United States, other than that of a member of the commissioned or enlisted personnel in the reserve components of the armed forces of the United States while not on extended active duty." There is sparse Vermont Supreme Court caselaw on what offices might qualify as offices of profit or trust under congressional authority.

Vermont Supreme Court cases in 1842 and 1925 held that Postmaster General qualified as one. However, in Baker v. Hazen, 133 Vt. 433 (1975), the Vermont Supreme Court found that the 1971 Postal Reorganization Act converted USPS into a semiautonomous operations independent of Congress, so that it no longer qualified as one.

This case also seemed to call into question the need for this provision: "Unfortunately, the very age of the provision makes it obscure." If the purpose was to prevent divided loyalty because of emoluments received from both state and federal sources, in these days of expanded funding, many citizens could be found to have so benefited.

## II. EACH CHAMBER HAS EXCLUSIVE AUTHORITY TO DISCIPLINE ITS MEMBERS

**Each chamber has the exclusive authority to judge its members' qualifications and to expel members and the exclusive constitutional authority to determine whether its members should be disqualified from voting on a question**

Vt. Const. Ch. II, §§ 14 and 19 provide the respective chambers with the exclusive authority to discipline its members.

> **Ch. II, § 14:** "The Representatives so chosen . . . shall have power to . . . judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their constituents antecedent to their election . . ."
>
> **Ch. II, § 19:** "The Senate shall have the like powers to decide on the election and qualifications or, and to expel any of, it members . . . as are incident to, or are possessed by, the House of Representatives."

**Judging Qualifications- Conduct Generally**

A chamber has the right to regulate the conduct of its members as an inherent power of self-protection, in order to uphold chamber integrity.

Mason's Manual of Legislative Procedure Sec. 561 provides:

> A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure or expulsion . . . A state legislative body possesses inherent powers of self-protection.

Additionally, in Brady v. Dean, 173 Vt. 542 (2001), the Supreme Court of Vermont held that the chamber authority to "judge qualifications" is an "exclusive constitutional prerogative" that "encompasses the authority to determine whether a member's personal or pecuniary interest requires *dis*-qualification from voting on a question before it." Id. at 544.[2]

[2] Brady v. Dean is an important case re: separation of powers and what is called the "Political Question Doctrine." In this 2001 case, Plaintiffs challenged the civil unions law based on Representatives' participation in a betting pool re: a vote on the bill. The complaint alleged violations of House Rule 75; of misc. constitutional provisions, including Vt. Const. Ch. I, §§ 6 (officers servants of the people) and 7 (common benefits) and Ch. II, §§ 12 (fees for advocating bills) and 61 (public offices of profit); and of misc. provisions in T.13 re: lotteries, games of chance, and bookmaking. Id. at 543.

> "[W]here the state legislature is made the judge of qualifications of its members by a provision of the state constitution, the legislature has the sole authority to do so, and courts must refrain from interfering in that determination." Id. at 544.

## III. CONFLICT OF INTEREST: CONFLICTS AND DUTIES

**Chamber rules prohibit members from voting on questions in which they have an "immediate or direct interest." Otherwise, in constitutional representative government, members have a duty to vote.**

Senate Rule 71 provides:

> No Senator shall be permitted to vote upon any question in which he or she is directly or immediately interested.

While on its own, this rule does not provide much guidance, Senate Rules are supplemented by Mason's Manual of Legislative Procedure. Senate Rule 91 provides:

> Where a question of parliamentary procedure arises not covered in these Senate Rules, Mason's Manual of Legislative Procedure shall prevail,…

Mason's Manual of Legislative Procedure is a body of parliamentary law adopted by many other state legislatures to fill in the details of their own rules. Mason's is based on court precedents, as well as rulings in chambers.

Mason's Manual of Legislative Procedure Sec. 522-1 provides the following guidance:

> It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies is of such major importance that members should be barred from voting on proposals of direct personal interest only in clear cases and when the proposal is particularly personal. This rule is obviously not self-enforcing and, unless a vote is challenged, members may vote as they choose. A member may vote on a proposal when other members are included with that member in the motion, even though that person has a personal or pecuniary interest in the result . . .

Mason's cites in part as precedential authority for that section provisions of Cushing's Legislative Assemblies, which is also a body of parliamentary law. Cushing's Sec. 1789, provides:

> a question is not of direct personal interest if it is not in regard to a legislator personally (such as a motion to censure the legislator), and a question is not of direct pecuniary interest if it involves a matter of general public interest.

Cushing's Sec. 1791 provides:

> Interest in a question pending in the house, is good cause for disallowing a vote; but such an interest must be a direct pecuniary interest, belonging to a separate description of individuals, and not such as also belongs to all the citizens, arising out of any measure of state policy. Generally speaking, it applies only to private bills, or

> bills relating to individuals, such as estate bills, inclosure bills, canals, joint-stock companies . . . wherein only the individual profit or loss is concerned . . . but does not apply to questions of interest arising out of public measures, such as tax bills, colonial regulations, domestic trades, and the like.[3]

Especially as a citizen legislature, members of the General Assembly will at times face votes that may impact themselves individually as well as their legislative district and the State. As explained in Cushing's Sec 1784:

> As members of the house are also members of the body politic, and connected with their fellow-citizens in all the ordinary relations of life and of business, it may, of course, sometimes happen, that they are themselves personally interested in the questions that come before them in their capacity of legislators.

Precedent in the Vermont Senate also exists. In the Senate Journal for February 8, 1994, the memorandum of the then Secretary of the Senate was journalized (1 Vt. Sen. J. at 116-17 (Adj. Sess. 1994)). As set forth in that memorandum, there is a distinction between a vote to approve a contract with an appropriation for a corporation and a vote to award a contract or to appropriate money to an individual member of the legislature. If the member is an employee of a corporation that is benefitted by legislation, the member is not disqualified from voting on the question, since any benefit is not one that flows directly or personally to the legislator. The same principle applies to legislators who may own stock in such a corporation.

**Without An "Immediate Or Direct Interest," Legislators Are Required To Vote**

The converse of Senate Rule 71 is Senate Rule 14 ("it shall be the duty of a senator to vote upon all questions") and Senate Rule 69 (when a vote is taken, "every member present shall vote unless excused by the Senate").

---

[3] In the early 1900s, "private bills" were more common – at least in part because this was before the Vermont Constitution was amended to prohibit the Legislature from granting private charters of incorporation. Here are some examples:

- 1896, Act No. 297: "An act granting a ferry to Orson Emerick."
- 1906, Act No. 429: "An act to pay certain persons the sums therein named on account of damages done to crops and trees by deer."
- 1906, Act No. 430: "An act granting relief and a pension to Wm. C. M'Ginnis."

## APPENDIX A

Under past interpretations of Senate Rule 71, the following activities do not rise to an "immediate or direct interest":

- Teachers may vote on the Budget which funds education
- Teachers may sit on the Education Committee
- Farmers may sit on the Agriculture Committee and vote on farm policy
- Town Clerks may vote on election law changes and serve on Government Operations
- Social workers may vote on health care changes and funding for programs that impact social services.
- Those who hold a license through the Office of Professional Responsibility may vote on the OPR bill.
- State employees may vote on pension changes and the "Pay Act"
- Doctors and nurses may sit on the health care committees and vote on health care legislation
- Lawyers may sit on Judiciary and vote on changes to the laws
- Accountants may sit on the Finance Committee and vote on tax law changes
- Homeowners may vote on education funding and the homestead tax credit
- Renters may vote on landlord-tenant law changes
- Veterans may vote on tax law changes impacting veterans
- Grocery Store owners may vote on cigarette and lottery legislation
- Landowners enrolled in Current Use may vote on Current Use legislation
- An owner of a cellular tower may vote on cellular tower legislation and telecommunications legislation
- Serving on a Board of Directors of a corporation that may be interested in various items of legislation to be considered by the Vermont General Assembly
- Serving on a Board of an organization that advocates for legislation or being a member of such an organization.