

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## ***APPEAL OF JACKIE CHURCHILL***

***DOCKET #99-O-6***

### ***DEPARTMENT OF HEALTH AND HUMAN SERVICES***

***October 20, 1999***

On September 28, 1999, the Board received the Department of Health and Human Services' Motion for Reconsideration of the Board's August 26, 1999, decision in the appeal of Jackie Churchill. The Board also received the State Employees' Association's September 28, 1999 Objection to that Motion.

In general, a request for reconsideration must either allege that the Board has made an error of law or must present additional facts that were not available for the Board's review when the appeal was decided. In order to request a rehearing, the party dissatisfied with the Board's order must set forth every ground upon which it is alleged that the Board's decision is unlawful or unreasonable. The Board may grant a rehearing if, in its opinion, good reason for such rehearing is stated in the motion.

Having reviewed the Motion in conjunction with the Appellant's Objection and the Board's decision in this matter, the Board finds no good reason therein to: 1) reconsider its decision, 2) schedule a further hearing, 3) allow the Department of Health and Human Services additional time to prepare a memorandum on the legal issues associated with the case, or 4) issue an order allowing the Department to impose the conditions outlined in the Department's April 6, 1999 letter to the appellant.

The Department of Health and Human Services has failed to persuade the Board that its August 26, 1999 decision is unreasonable or unlawful, or that Ms. Churchill's role as Overseer of Town Welfare for the Town of Sanbornton creates an actual, direct and substantial conflict of interest under RSA

21-I:52 with her employment as a Case Technician for the Department of Health and Human Services.

Accordingly, the Board voted unanimously to DENY the State's Motion for Reconsideration.

THE PERSONNEL APPEALS BOARD

  
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Patrick H. Wood, Chairman

  
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Robert J. Johnson, Commissioner

  
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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301  
Attorney Douglas McNutt, Department of Health and Human Services, 129 Pleasant  
Street, Concord, NH 03301  
SEA Field Representative Kate McGovern, PO Box 3303, Concord, NH 03302-3303

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Docket 99-0-6

Department of Health and Human Services

August 26, 1999

The New Hampshire Personnel Appeals Board (Wood, Johnson, and Barry) met on Wednesday, July 28, 1999, under the authority of RSA 21-I:58, to hear the appeal of Jackie Churchill, an employee of the Department of Health and Human Services. Ms. Churchill was represented by Ms. Kate McGovern, SEA Field Representative. The Department of Health and Human Services was represented by Attorney Douglas McNutt.

Ms. Churchill was appealing the Department's decision that permitting Ms. Churchill to serve as the elected Overseer of Town Welfare for the Town of Sanbornton would create a conflict of interest or the appearance of a conflict of interest with her position as a Case Technician for the Department's Division of Family Assistance, Laconia District Office.

The appeal was heard on offers of proof by the representatives of the parties. The record in this matter consists of the audio tape recording of the hearing, notices and orders issued by the Board, pleadings submitted by the parties, and documents entered into evidence as follows:

### State's Exhibits

1. Letter to Mary Ann Steele from Kate McGovern, SEA, April 20, 1999
2. Letter to Jackie Churchill from Commissioner Shumway, April 6, 1999
3. Executive Branch Code of Ethics
4. RSA 165:20-C
5. Section 117 of the Food Stamp Manual
6. Section 117 of the Family Assistance Manual
7. Section 109.05 of the Adult Assistance Manual
8. Section 137 of the Family Assistance Manual
9. RSA 21-I:52
10. Division of Personnel Rules Per 101.03
11. Department of Health and Human Services - Conflict of Interest

The appellant submitted no additional written material other than her appeal, with attachments, dated April 20, 1999.

Before the case began, the Chair stated that his law firm represents the Town of Sanbornton and he, therefore, would recuse himself from hearing this case. In response to the Chair's comments, both the Department and Ms. Churchill acknowledged the conflict but requested the Chair to remain on the panel. After consultation with Commissioners' Johnson and Barry, the Chair agreed to remain on the panel with the clear understanding that his law firm could not represent the Town of Sanbornton on issues related to this appeal.

Ms. Churchill was requested by the Town of Sanbornton officials to run for the vacant position of Overseer of Town Welfare and she agreed to do so. Ms. Churchill notified the Department of that decision and the Department apparently issued a decision on February 11, 1999, stating that there would be a conflict of interest or an appearance of a conflict of interest between her role as

a Case Worker and her potential role as Overseer of Town Welfare. That decision is not part of the record before the Board but is referred to in Department's Exhibit 2.

Ms. Churchill was elected to serve as Overseer of Town Welfare for the Town of Sanbornton in March 1999. Shortly after she was elected but prior to being sworn in, the Department, by letter dated April 6, 1999, notified Ms. Churchill that it would accept her role as Overseer upon receipt of her written acknowledgment of her acceptance of the following conditions:

- "All cases on which you are currently working that are associated with Sanbornton will be removed from your workload prior to your acceptance of the Overseer's position.
- You will accept alternate work to make up for the case work that you would have performed if not for this circumstance.
- In your capacity as a Department employee and relative to any Department applicant, recipient, client or case associated with Sanbornton, you will not take any action, access any information, review any information, make any recommendation, participate in any discussion with a coworker, or by any other means whether physical or electronic, influence a Department decision associated with Sanbornton, without permission from your supervisor.
- In your capacity as a Department employee, if you ever have reason to question the appropriateness of your involvement with any applicant, recipient, client or case because of your role as Overseer, whether or not the circumstance bears a direct relationship to Sanbornton, you will notify your supervisor immediately and directly of the potential conflict.
- You will notify your supervisor if you are no longer the Overseer."

By letter dated April 20, 1999, Ms. Churchill appealed the Department's decision and asked the Board to determine whether an "actual direct and substantial conflict" exists as required under RSA 21-I:52.

Mr. McNutt explained that the Department, under federal mandates, had limited time periods within which to determine whether a person would be eligible for certain types of assistance. [Department's Exhibit's 5, 6 and 7] Under New Hampshire law, RSA 165:20-C, the Department must reimburse any town or city for any public assistance paid to such a person if the Department does not determine eligibility within the federal time lines. [Department's Exhibit 4]

Mr. McNutt argued that Ms. Churchill could have a desire as Overseer of Town Welfare for the Town of Sanbornton to attempt to process claims of Sanbornton residents more quickly than those of residents of other municipalities. He also argued that as Overseer of Town Welfare, Ms. Churchill could have an interest in reducing Town expenditures by perhaps deciding that a certain person would be eligible for Department assistance who would not otherwise be eligible. Third, Mr. McNutt argued that Ms. Churchill could have an interest in increasing the eligibility of needy residents of Sanbornton for such things as food stamps, thus reducing the financial burden on the Town of Sanbornton at the expense of the State and other municipalities. Fourth, Mr. McNutt argued that the dual roles could create an overlap of confidentiality that would violate the Department's rules on confidentiality. Finally, Mr. McNutt argued that attempting to adjust Ms. Churchill's work load as a Case Worker to eliminate potential conflicts, as suggested in Commissioner Shumway's letter of April 6, 1999, Department's Exhibit 2, could create an overly burdensome management problem for the Laconia District Office. Mr. McNutt also expressed concern over the precedent that might be set if Ms. Churchill were allowed to serve as Overseer of Town Welfare for the Town of Sanbornton. He argued that while the number of cases that could be affected by Ms. Churchill would be small, such would not be the case in a larger community. The potential for abuse could be much greater and the resultant problems more severe if a Case Worker in, say, Nashua were to be the Overseer of Welfare for the city of Nashua.

Mr. McNutt argued that if Ms. Churchill were to serve as Overseer of Town Welfare in the Town of Sanbornton, there would be potential of a conflict or at least an appearance of conflict between her role as a Case Worker and her "private interest" as such Overseer of Town Welfare.

That potential conflict or appearance of conflict, he argued, would be contrary to the New Hampshire Executive Branch Code of Ethics, Department's Exhibit 3, and contrary to the Department's Conflict of Interest Policy, Department's Exhibit 11.

Ms. McGovern stated that Ms. Churchill was elected in an uncontested race. She argued that Ms. Churchill has no motive or desire to do anything improper. Ms. McGovern also argued that there are many checks and balances in the existing system, such as Quality Control reviews, audits, and specific rules, policies and procedures that would quickly catch any attempt by Ms. Churchill to improperly benefit the Town of Sanbornton. She explained that where Town Assistance is immediate, State Assistance is more deliberate and there is substantial oversight in that process.

Ms. McGovern stated that Ms. Churchill also has served as a part-time Correctional Officer in Belknap County and her personal knowledge of certain individuals gained from that work has never been an issue with the Department. She also stated that the total Welfare budget for the Town of Sanbornton is \$25,000.00 and has been for some time. According to Ms. McGovern that budgeted amount has never been fully expended.

With regard to the conditions set forth in Commissioner's Shumway's letter of April 6, 1999, Department's Exhibit 2, Ms. McGovern indicated that Ms. Churchill's immediate supervisors had never been contacted about those conditions. Furthermore, she argued those supervisors believe the conditions are not workable in an office as small as the Laconia District Office.

Finally, Ms. McGovern explained that Ms. Churchill, if sworn in as Overseer of Town Welfare, would receive \$100.00 per month for her service. Ms. Churchill, currently at labor grade 13, was also concerned about the threat of disciplinary action set forth in Commissioner Shumway's letter of April 6, 1999.

In conclusion, Ms. McGovern argued that there is no actual, direct or substantial conflict of interest presented and that Ms. Churchill should be allowed to serve as Overseer of Town Welfare for the Town of Sanbomton.

In rebuttal, Mr. McNutt argued that the issue under RSA 21-I:52 is not one of personal gain. Rather it is a sensitivity of Towns to State assistance and a concern among municipalities that the State might be "downloading" its burdens onto the municipalities. He argued that the Department did not want to preclude Ms. Churchill from public service outside of her duties as a Case Worker. However, for the reasons previously stated, he argued the Department felt the potential for conflict or the appearance of conflict should prohibit Ms. Churchill from serving as a Department Case Worker and Overseer of Town Welfare.

Ms. McGovern explained that the Laconia District Office would have to establish a position of "traffic director" in order to administer the conditions in Commissioner Shumway's letter of April 6, 1999. She also argued that the Department's position constitutes an unnecessary curtailment of Ms. Churchill's freedom of association.

In answer to a question from Commissioner Barry, Ms. Churchill explained that her duties as Overseer of Town Welfare would involve evening meetings and would not interfere with her hours as a Department employee. Ms. Churchill also indicated that there were other Case Workers in the State who are currently serving as Overseers of Town Welfare in other communities. Commissioner Johnson asked Mr. McNutt if the Department believes these matters should be reviewed on a case by case basis. Mr. McNutt responded that he felt there was an inherent conflict that would prohibit caseworkers from serving as Overseers of Town Welfare and, therefore, a case review would not be necessary.

### Standard of Review

RSA 21-I:52 provides as follows:

"...No employee in the state classified service shall hold any remunerative elective public office, or have other employment, either of which creates an actual, direct and substantial conflict of interest with the employee's employment, which conflict cannot be alleviated by said employee abstaining from actions directly affecting such classified employment. Determination of such conflict shall be made by the personnel appeals board after the parties are afforded rights to a hearing pursuant to RSA 21-I:58. The burden of proof in establishing such a conflict shall be upon the party alleging it. No action affecting said employee shall be taken by the appointing authority because of such public office or other employment until after a full hearing before and approval of such action by the personnel appeals board. If an actual, direct and substantial conflict of interest, which cannot be alleviated by abstention by the employee, is found by the personnel appeals board, the board must approve any action proposed by the appointing authority; and the employee shall be given a reasonable amount of time to leave the employee's public office or other employment or otherwise end the conflict before the appointing authority initiates that action. "

### Findings of Fact

In consideration of the evidence, argument and offers of proof, the Board made the following findings of fact:

1. Ms. Churchill was elected to serve as Overseer of Town Welfare for the Town of Sanbornton in March 1999, but has not yet been sworn in as such Overseer.
2. Among her duties as a Case Worker in the Laconia District Office of the Division of Family Assistance, Ms. Churchill determines whether certain individuals are eligible for different types of assistance.

3. These determinations of eligibility are to be made within time frames set by the federal government.
4. Prior to making those eligibility determinations, a Sanbornton resident might be granted assistance by the Town of Sanbornton.
5. That town assistance is to continue until the State assistance becomes available.
6. If the Department does not make its eligibility determination within the mandated time frames, the Department must reimburse the town for any assistance paid after the expiration of those time frames.
7. The position of Overseer of Town Welfare for the Town of Sanbornton is a remunerative elective public office.

Based on the documents presented and the offers of proof, the Board agrees that if Ms. Churchill were to process claims for eligibility made by Sanbornton residents differently than claims made by residents of other municipalities in an effort to save the Town of Sanbornton money at the expense of those other municipalities, there would be an actual, direct and substantial conflict of interest under RSA 21-I:52. However, the Department's argument that a potential for such conflict is the same as an actual conflict is not persuasive.

Under RSA 21-I:52, the Board must review each case on its own merit to determine whether there is an actual, direct, and substantial conflict which exists. In this case, the Department has not shown that Ms. Churchill's election as Overseer of Town Welfare for the Town of Sanbornton would create an actual conflict with her duties as a Case Worker, that there is a direct conflict between the duties as Overseer of Town Welfare and her duties as a Case Worker, and that such a conflict is substantial.

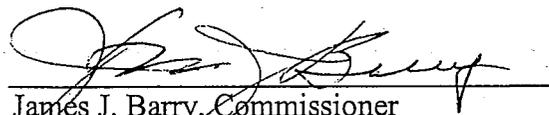
The Department has argued that the duties of confidentiality of a Case Worker are in conflict with the role of Overseer of Town Welfare. However, the Department provided no evidence showing that such overlap of confidentiality would be a substantial conflict of interest.

Therefore, on the evidence, argument, and offers of proof, the Board voted unanimously to grant Ms. Churchill's appeal and to overturn the Department's decision prohibiting or restricting her from serving as the duly-elected Overseer of Town Welfare for the Town of Sanbornton.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Robert J. Johnson, Commissioner

  
James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301  
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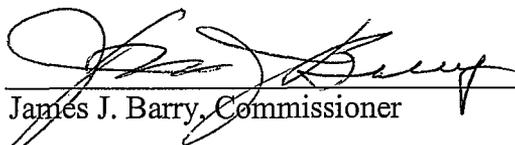
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