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New Vt. gov's picks have potential conflicts

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MONTPELIER, Vt. (AP) — In a long fight over Omya Inc.'s plan to dispose of marble processing waste, a citizens' group had some top-notch legal help.

David Mears, director of the Environmental and Natural Resources Law Clinic at Vermont Law School, took up the cause for the group Residents Concerned about Omya in a case decided earlier this year.

Now, Mears has been tapped by Vermont Gov.-elect Peter Shumlin to head up the state Department of Environmental Conservation, the agency responsible for making sure Omya heeds the conditions of a waste disposal permit it eventually got for the Pittsford project.

Can a lawyer who was Omya's adversary fairly keep tabs on the company now that he's a state regulator?

Similar questions have been posed over several appointments made by Shumlin, a Democrat who will succeed Republican Gov. Jim Douglas next month.

For Shumlin, as for many high-level elected officials, the price of recruiting people with years of experience in their fields is accepting old alliances as part of the package.

Vermont state government has no ethics law covering conflicts of interest, or an ethics commission to investigate alleged infractions, as some states do.

Instead, it has an executive order passed down from Gov. Howard Dean to Douglas that includes a code of ethics for how senior appointees need to balance their government duties with outside ties.

Shumlin plans to adopt it, according to spokeswoman Alexandra MacLean, his secretary of civil and military affairs, who will oversee enforcement of it.

Finding qualified, knowledgeable people for high-level appointments who have no potential conflicts is hard, especially in a small state, MacLean said.

"You could bring someone in who has experience playing checkers and has no conflicts of interest, but they're not going to have the experience and knowledge they need to do a good job," she said.

Alan Rosenthal, a professor of public policy in the Eagleton Institute of Politics at New Jersey's Rutgers University, said a key question is whether appointees are likely to benefit financially from having worked previously in the private sector before taking the public jobs.

"It's worth discussion. It's worth an article ... (But) there's no indication that they would benefit financially, and that is really the heart of conflict-of-interest laws," Rosenthal said.

Former Deputy Secretary of State Paul Gillies, a lawyer and historian who chaired a special ethics commission for Secretary of State Deb Markowitz, said he didn't think Vermonters have much to worry about.

The Vermont Constitution says public officials "are servants and trustees and at all times accountable to us, us being the people. The expectation is that there would be recusals" — that officials would step aside and let a deputy take over when for them to rule in a matter would present a direct conflict, Gillies said.

Mears "will have to certainly not be involved in matters directly involving Omya and others with whom he's been involved in litigation," said Van Schwiebert, a Rutland lawyer who has represented Omya on the waste matter and other issues. "He may have to step aside on some policy issues also. That will have to be decided on a case-by-case basis."

For his part, Mears — who has also represented the Connecticut River Watershed Council in a dispute with Vermont Yankee nuclear plant — says he's had conversations with state lawyers about how to handle conflicts, real or perceived.

"The steps I ultimately take, based upon the varying circumstances of each case and the counsel I receive from state attorneys, will be public information and I hope to have identified those steps either by the time I take office or shortly thereafter," he said in an e-mail message, in response to an inquiry from AP.

"I would be pleased to share that information once determined," wrote Mears, who is currently in China on a Fulbright fellowship but plans to cut it short to return to Vermont for his new job.

Mears' isn't the only Shumlin appointee with potential baggage:

—Stephen Kimbell, who's been named commissioner of the state Department of Banking, Insurance, Securities and Health Care Administration, retired last summer from Montpelier lobbying firm Kimbell Sherman Ellis. Among its clients: Insurance and pharmaceutical companies, and the American Dental Association. Now, he'll be a key member of the team Shumlin has assembled to move Vermont toward a single-payer health care system.

"Steve has the relationships that he needs with the hospitals, the insurers, the health care providers, with health care consumers, with doctors, with the business community, to bring people together to get done what is going to be extraordinarily tough — real health care reform for Vermont," Shumlin said when he announced the appointment last week.

Kimbell said no one should expect his relationships to result in those industries being coddled.

Lawyers like him are "professional advocates for the people they represent," Kimbell said. "Starting January 6th I'm going to be representing the people of the state of Vermont. I'm taking money from these people. I take that really seriously. Somebody pays me money to do something, I try really hard to get it done. That's the essence of professionalism, whether it's lawyers or gunslingers or whatever."

—Elizabeth Miller, Shumlin's pick for commissioner of the utility-regulating state Department of Public Service, comes with a background including several civic affiliations, among them board member with the Vermont Symphony Orchestra. Among the orchestra's corporate donors: Green Mountain Power, which frequently negotiates with the department over utility rates.

Miller, an attorney in Burlington, said at a news conference Tuesday she would take whatever steps she needed to abide by the ethics code as she moved into her new job.

On Thursday, she said in an e-mail she had decided to resign from the boards of the symphony and the Lake Champlain Chamber of Commerce.

Rosenthal said he thought that was overdoing it. "I don't think it's worth people giving up valuable service ... they've been doing in order to do public service."

Miller's husband, Eric Miller, is a lawyer for the Burlington firm Sheehey Furlong & Behm, which has done extensive legal work for Green Mountain Power. She said her husband has not been involved in that work, but focuses on other areas of the law.