

NEW YORK STATE
GENERAL MUNICIPAL LAW
CHAPTER 24 OF THE CONSOLIDATED LAWS
ARTICLE 18--CONFLICTS OF INTEREST OF MUNICIPAL OFFICERS AND EMPLOYEES
SECTIONS 800 THROUGH 813

Current through Chapter 690 of the 2007 Legislative Session

§ 800. Definitions

When used in this article and unless otherwise expressly stated or unless the context otherwise requires:

1. "Chief fiscal officer" means a comptroller, commissioner of finance, director of finance or other officer possessing similar powers and duties, except that in a school district the term shall not mean a member of the board of education or a trustee thereof.

2. "Contract" means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.

3. "Interest" means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.

4. "Municipality" means a county, city, town, village, school district, consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal agency, a joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units, an industrial development agency but shall have no application to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.

5. "Municipal officer or employee" means an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

6. "Treasurer" means a county treasurer, city treasurer, town supervisor, village treasurer, school district treasurer, fire district treasurer, improvement district treasurer, president of a board of health of a consolidated health district, county vocational educational and extension board treasurer, treasurer of a board of cooperative educational services, public general hospital treasurer, or other officer possessing similar powers and duties.

§ 801. Conflicts of interest prohibited

Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above and (2) no chief fiscal officer, treasurer, or his deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or for investment of funds of the municipality of which he is an officer or employee. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

§ 802. Exceptions

The provisions of section eight hundred one of this chapter shall not apply to:

1. a. The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer or his deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;

b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;

c. The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;

d. The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefor is approved by order of the supreme court upon petition of the governing board;

e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;

f. A contract with a membership corporation or other voluntary non-profit corporation or association;

g. The sale of bonds and notes pursuant to section 60.10 of the local finance law;

h. A contract in which a municipal officer or employee has an interest if such contract was entered into prior to the time he was elected or appointed as such officer or employee, but this paragraph shall in no event authorize a renewal of any such contract;

i. Employment of a duly licensed physician as school physician for a school district upon authorization by a two-thirds vote of the board of education of such school district, notwithstanding the fact that such physician shall have an interest, as defined in section eight hundred one of this chapter, in such employment.

j. Purchases or public work by a municipality, other than a county, located wholly or partly within a county with a population of two hundred thousand or less pursuant to a contract in which a member of the governing body or board has a prohibited interest, where:

(1) the member of the governing body or board is elected and serves without salary;

(2) the purchases, in the aggregate, are less than five thousand dollars in one fiscal year and the governing body or board has followed its procurement policies and procedures adopted in accordance with the provisions of section one hundred four-b of this chapter and the procurement process indicates that the contract is with the lowest dollar offer;

(3) the contract for the purchases or public work is approved by resolution of the body or board by the affirmative vote of each member of the body or board except the interested member who shall abstain.

2. A contract with a corporation in which a municipal officer or employee has an interest by reason of stockholdings when less than five per centum of the outstanding stock of the corporation is owned or controlled directly or indirectly by such officer or employee;

b. A contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the public service commission;

c. A contract for the payment of a reasonable rental of a room or rooms owned or leased by an officer or employee when the same are used in the performance of his official duties and are so designated as an office or chamber;

d. A contract for the payment of a portion of the compensation of a private employee of an officer when such employee performs part time service in the official duties of the office;

e. A contract in which a municipal officer or employee has an interest in the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contracts in which such person had an interest during the fiscal year, does not exceed the sum of seven hundred fifty dollars.

f. A contract with a member of a private industry council established in accordance with the federal job training partnership act [FN1] or any firm, corporation or association in which such member holds an interest, provided the member discloses such interest to the council and the member does not vote on the contract.

[FN1: 29 USC § 1501, et seq.]

§ 803. Disclosure of interest

1. Any municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

2. Notwithstanding the provisions of subdivision one of this section, disclosure shall not be required in the case of an interest in a contract described in subdivision two of section eight hundred two hereof.

§ 804. Contracts void

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

§ 804-a. Certain interests prohibited

No member of the governing board, of a municipality shall have any interest in the development or operation of any real property located within Nassau County and developed or operated by any membership corporation originally formed for purposes among which are the following:

1. to plan for, advise, recommend, promote and in all ways encourage, alone or in concert with public officials and bodies and interested local associations, the development and establishment of any lands in Nassau County publically owned with particular emphasis on industrial, business, commercial, residential and public uses, the augmentation [FN1] of public revenues and furtherance of the public interest of the citizens of Nassau County;

2. to conduct studies to ascertain the needs of Nassau County as pertains to such publically owned lands and supporting facilities and in Nassau County generally for the purpose of aiding the County of Nassau in attracting new business, commerce and industry to it and in encouraging the development and retention of business, commerce and industry;

3. to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities and instruct or train individuals to improve or develop their capabilities for such jobs;

4. to implement and engage itself in plans of development of such publically owned lands and other areas in connection with private companies and citizens and with public bodies and officials, and to participate in such operations, leaseholds, loans, ownerships with respect to land, buildings or public facilities of interest therein as may be lawful and desirable to effectuate its corporate purposes and the best interests of the people of Nassau County.

[FN1: so in original]

§ 805. Violations

Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article shall be guilty of a misdemeanor.

§ 805-a. Certain action prohibited

1. No municipal officer or employee shall: a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;

b. disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;

c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or

d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

2. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

§ 805-b. Solemnization of marriages

Notwithstanding any statute, law or rule to the contrary, no public officer listed in section eleven of the domestic relations law shall be prohibited from accepting any fee or compensation having a value of one hundred dollars or less, whether in the form of money, property, services or entertainment, for the solemnization of a marriage by such public officer at a time and place other than the public officer's normal public place of business, during normal hours of business. For the purpose of this section, a town or village judge's normal hours of business shall mean those hours only which are officially scheduled by the court for the performing of the judicial function.

§ 806. Code of ethics

1. (a) The governing body of each county, city, town, village, school district and fire district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Notwithstanding any other provision of this article to the contrary, a fire district code of ethics shall also apply to the volunteer members of the first district fire department. Codes of ethics shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.

(b) Effective on and after January first, nineteen hundred ninety-one, such codes of political subdivisions, as defined in section eight hundred ten of this article, may contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body, as defined in section eight hundred ten of this article. Nothing herein shall be construed to restrict any political subdivision or any other municipality from requiring such a filing prior to January first, nineteen hundred ninety-one. Other than as required by subdivision two of section eight hundred eleven of this article, the governing body of any such political subdivision or other municipality may at any time subsequent to the effective date of this paragraph, adopt a local law, ordinance or resolution pursuant to subdivision one of section eight

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW
YORK

Informal Opinion No. 92-31

1992 N.Y. Op. (Inf.) Att'y Gen. 31; 1992 N.Y. AG LEXIS 33

May 14, 1992

SYLLABUS:

[*1]

GENERAL MUNICIPAL LAW §§ 806, 808.

A town board member employed by a firm that does extensive land development in town should recuse himself from participating in deliberations on legislation and appointments wherein he has or appears to have a conflict of interests.

REQUESTBY:

JAMES D. COLE, Assistant Attorney General in Charge of Opinions

OPINION:

Stephen A. Pechenik, Esq.
Town Attorney
Town of Pittstown
41 Second Street
Troy, NY 12180

You have asked whether a newly appointed town board member should excuse himself from voting on or participating in discussions concerning proposed land use regulations and appointments to various land use regulatory positions such as the planning board and the zoning board of appeals.

You have set forth the facts in this matter. The town board member was appointed to fill a vacancy on that board. He is employed in the private sector as a project manager for a development company which buys and sells land in the town and which currently owns large amounts of land in the town. The company develops land and currently has several applications for subdivision approval before the town planning board. The question is whether, in light of the town board member's [*2] private sector interests, it is proper for him to vote on land use legislation and appointments to land use regulatory positions such as the planning board and zoning board of appeals.

The development of ethics standards to define when private employment and activities are in conflict with the official duties of a local government officer or employee has been left to the governing body of the municipality. *General Municipal Law § 806(1)*. Governing bodies of a county, city, town, village and school district are required to adopt codes of ethics, which must include these and other standards. *Ibid*. A code of ethics may provide for the prohibition of

conduct in violation of ethics standards. Ibid. Local governments are authorized to establish boards of ethics, which may render advisory opinions to local officers and employees concerning compliance with standards established by a code of ethics. Id., § 808. Thus, we suggest that you review your local code of ethics to determine if any of its provisions apply to the facts at hand.

Assuming, as you have indicated, that the development company does extensive land development in [*3] the town resulting in substantial applications before the planning board and zoning board of appeals, we believe it is prudent that the town board member recuse himself from participating in appointments to the planning board and zoning board of appeals. Also, he should recuse himself from deliberations on land use regulations which will affect his employer's interests. Governmental officers, in exercising the public trust, must avoid circumstances which compromise their ability to make impartial judgments solely in the public interest. Op Atty Gen (Inf) No. 90-57. Even the appearance of impropriety must be avoided in order to maintain public confidence in government. Ibid. In our view, the board member's employment as project manager for the development company compromises his impartial judgment or at least creates in the eyes of the public an appearance of impropriety.

The courts have recognized a disqualifying conflict of interests resulting from a board member's employment with a firm likely to receive business if an application before the board is approved. *Taxpayers' Association v Town Board*, 69 AD2d 320 (2d Dept 1979); see also, *Matter of Zagoreos v Conklin*, [*4] 109 AD2d 281, 287 (2d Dept 1985). There are "subtle but powerful psychological pressures" placed on an employee in these situations. *Matter of Zagoreos*, 109 AD2d at 288. Similarly, we believe that the town board member should refrain from participating in legislative decisions in which his firm has or may have a financial interest. The appointment of planning board and zoning board of appeals members gives rise to similar concerns. Participation in these appointments by this town board member, whose private employer will make substantial applications before the planning board and zoning board of appeals, compromises the integrity of those boards.

We note that the decisions of local boards have been set aside based upon judicial findings of conflicts of interests. *Zagoreos* and *Taxpayers*, *supra*.

Thus, it is our view that the town board member should recuse himself in the foregoing situations.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Legal Topics:

For related research and practice materials, see the following legal topics:

Governments Courts Judges Governments Local Governments Finance Real Property Law Zoning & Land Use Ordinances

MILLER, MANNIX, SCHACHNER & HAFNER, LLC

ATTORNEYS AT LAW

451 GLEN STREET

P.O. BOX 765

GLENS FALLS, NEW YORK 12801

(518)793-6611

Mark Schachner*
Robert H. Hafner
Cathi L. Radner*
Michael J. Hill
Leah Everhart

*Also Admitted in Massachusetts
*Also Admitted in Maryland and Pennsylvania

John W. Miller (1908-1968)
John C. Mannix (1931-2006)

Facsimile: (518)793-6690
Toll Free: 1-800-421-6166
E-Mail: mmsh@nycap.rr.com
Web Site: millermannix.com

December 27, 2007

Carl J. Madonna, Esq.
10 Oak Street
Plattsburgh, NY 12901

Re: Town of Burke/Wind Energy Facilities Law

Dear Attorney Madonna:

We represent Ken and Janet Tacy, long-time residents of the Town of Burke. The Tacys are concerned about the proposed adoption of a Wind Energy Facilities Law in the Town of Burke.

We briefly discussed with you the Town Board's intent to adopt a Local Law. We also spoke with representatives of the Association of Towns regarding situations in which Town Boards may be unable to act, due to conflicts of interest.

When discussing this matter in the abstract, it was presumed that Town Board Members did not have a direct pecuniary interest in the legislation upon which they would be acting. You suggested that the Town Board would pass the zoning provisions necessary to allow placement of wind towers in the Town, but that the ultimate decision on applications would be deferred to the Zoning Board of Appeals (ZBA). You indicated that the ZBA Members, with one possible exception, would not have conflicts of interest.

Further investigation reveals that two Town Board Members who would be voting on the proposed Wind Energy Facilities Law have a direct (as opposed to potential) pecuniary interest in the placement of wind towers. Town Board member Arnold Lobdell is a party to an Option and Lease Agreement with Jericho Rise Wind Farm, LLC. This Option and Lease Agreement is referenced in a Subordination, Non-Disturbance and Attornment Agreement entered into between Community Bank NA, Jericho Rise Wind Farm LLC and Arnold, Trudy and James Lobdell. Further, Town Board member David Vincent has entered into an Easement Agreement with Noble Chateaugay Windpark, LLC.

In light of the existence of these agreements, there is nothing hypothetical or speculative about these Town Board Members' interests in bringing wind towers to the

Carl J. Madonna, Esq.
Re: Town of Burke/Wind Energy Facilities Law
December 27, 2007
Page 2 of 2

Town of Burke. Both of these Town Board Members stand to benefit financially by allowing wind towers in the Town of Burke and have a direct interest in where such towers are located. In light of such direct conflicts of interest, we believe it is mandatory that these two Town Board Members recuse themselves and take no further part in any action related to wind energy facilities. For your information, we enclose a copy of the Attorney General's Opinion, Informal Opinion # 92-31, which is closely on-point. We officially request that Town Board Members Lobdell and Vincent recuse themselves. It is our understanding that the remaining three Town Board Members have no direct pecuniary interest in the siting of wind towers and ask that you confirm this fact.

Finally, it is our understanding, based upon review of public records, that several ZBA Members have similar conflicts of interest and we anticipate that any such ZBA Member who has a direct financial interest in the siting of wind towers will recuse himself or herself from participation in any related matters.

We are sending a copy of this letter to the Town Clerk with the request that it be made part of the official record of the Town Board's deliberation in this matter. Thank you for your attention to this matter. We wish you a happy and healthy new year.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC



Cathi L. Radner

CLR/wp
Enclosure
cc: Town of Burke Town Clerk
Mr. and Mrs. Ken Tacy

MILLER, MANNIX, SCHACHNER & HAFNER, LLC
ATTORNEYS AT LAW
451 GLEN STREET
P.O. BOX 765
GLENS FALLS, NEW YORK 12801
(518)793-6611

Mark Schachner*
Robert H. Hafner
Cathi L. Radner*
Michael J. Hill
Leah Everhart

*Also Admitted in Massachusetts
*Also Admitted in Maryland and Pennsylvania

John W. Miller (1908-1968)
John C. Mannix (1931-2006)

Facsimile: (518)793-6690
Toll Free: 1-800-421-6166
E-Mail: mmslh@nycap.rr.com
Web Site: millermannix.com

December 27, 2007

Yvonne Spinner, Town Clerk
Town of Burke Town Hall
842 Depot Street
Burke, NY 12917

Re: Freedom of Information Law Request

Dear Ms. Spinner:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, we hereby request a copy of the Code of Ethics of the Town of Burke. We will promptly remit payment of any charge associated with this request. If the fee for copying the document requested will exceed Ten Dollars (\$10), please advise.

As you know, the Freedom of Information Law requires that an agency respond to the request within five (5) business days of receipt of the request. Therefore, we would appreciate a prompt response and look forward to hearing from you shortly.

If, for any reason, any portion of our request is denied, please inform us in writing of the reasons for the denial and provide the name and address of the person to whom an appeal should be directed.

Very truly yours,
MILLER, MANNIX, SCHACHNER & HAFNER, LLC



Cathi L. Radner

CLR/wp
cc: Ken and Janet Tracy
Carl J. Madonna, Esq.