2024 Local Government Training – Erie County

Ethics for Zoning Board of Appeals and Planning Board Members

Supplemental Materials

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McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 18. Conflicts of Interest of Municipal Officers and Employees (Refs & Annos)

McKinney's General Municipal Law § 800

§ 800. Definitions

Effective: December 28, 2018
Currentness

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 firefighter or civil defense volunteer, except a fire chief or assistant fire chief.

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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.

Credits

(Added L.1964, c. 946, § 2. Amended L.1965, c. 1043, § 1; L.1971, c. 179, § 1; L.1980, c. 88, § 3; L.2018, c. 476, § 81, eff. Dec. 28, 2018.)

McKinney's General Municipal Law § 800, NY GEN MUN § 800
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McKinney's General Municipal Law § 801

§ 801. Conflicts of interest prohibited

Currentness

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.

Credits
(Added L.1964, c. 946, § 2. Amended L.1965, c. 1043, § 2.)

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McKinney's General Municipal Law § 802

§ 802. Exceptions

Effective: July 28, 2009
Currentness

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 including, but not limited to, rural electric cooperatives. For purposes of this paragraph, the term “rural electric cooperative” shall have the same meaning as the term “cooperative” as defined in subdivision (a) of section two of the rural electric cooperative law;

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;

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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. 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 if 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 [1] 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.

Credits

(Added L.1964, c. 946, § 2. Amended L.1965, c. 1043, § 3; L.1966, c. 135, § 1; L.1968, c. 105, § 1; L.1970, c. 1019, § 1; L.1973, c. 195, § 18; L.1977, c. 28, § 1; L.1983, c. 440, § 1; L.1996, c. 364, §§ 1, 2; L.2009, c. 249, § 1, eff. July 28, 2009.)

Footnotes

1 29 USCA § 1501 et seq., repealed.

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McKinney's General Municipal Law § 803

§ 803. Disclosure of interest

Effective: August 16, 2005
Currentness

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.

Credits
(Added L.1964, c. 946, § 2. Amended L.1965, c. 1043, § 4; L.2005, c. 499, § 1, eff. Aug. 16, 2005.)

McKinney's General Municipal Law § 803, NY GEN MUN § 803
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McKinney's General Municipal Law § 804

§ 804. Contracts void

Currentness

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.

Credits
(Added L.1964, c. 946, § 2.)

McKinney's General Municipal Law § 804, NY GEN MUN § 804
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McKinney's General Municipal Law § 804-a

§ 804-a. Certain interests prohibited

Currentness

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 [1] owned with particular emphasis on industrial, business, commercial, residential and public uses, the augmention [1] 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 [1] 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 [1] 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 or interest therein as may be lawful and desirable to effectuate its corporate purposes and the best interests of the people of Nassau County.

Credits
(Added L.1970, c. 720, § 1.)

Footnotes

1 So in original.

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McKinney's General Municipal Law § 805

§ 805. Violations

Currentness

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

Credits

(Added L.1964, c. 946, § 2.)

McKinney's General Municipal Law § 805, NY GEN MUN § 805
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McKinney's General Municipal Law § 805-a

§ 805-a. Certain action prohibited

Currentness

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.

Credits
(Added L.1970, c. 1019, § 2. Amended L.1987, c. 813, § 21.)

McKinney's General Municipal Law § 805-a, NY GEN MUN § 805-a
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McKinney's General Municipal Law § 805-b

§ 805-b. Solemnization of marriages

Effective: August 15, 2007
Currentness

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.

Credits

(Added L.1983, c. 433, § 1. Amended L.1990, c. 238, § 1; L.2007, c. 536, § 1, eff. Aug. 15, 2007.)

McKinney's General Municipal Law § 805-b, NY GEN MUN § 805-b
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McKinney's General Municipal Law § 806

§ 806. Code of ethics

Effective: December 17, 2014
Currentness

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 fire 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 hundred eleven of this article and any such political subdivision or municipality, acting by its governing body, may take such other action as is authorized in such subdivision. Any political subdivision or other municipality to which all of the provisions of section eight hundred twelve of this article apply may elect to remove itself from the ambit of all (but not some) provisions of such section in the manner authorized in subdivision three of such section eight hundred twelve. In such event any such political subdivision or municipality shall be subject to certain conditions and limitations set forth in paragraphs (a), (b) and (c) of such subdivision three which shall include, but not be limited to, the promulgation of a form of an annual statement of financial disclosure described in subdivision one of such section eight hundred eleven.

2. The chief executive officer of a municipality adopting a code of ethics shall cause a copy thereof to be distributed to every officer and employee of his municipality. The fire district commissioners shall cause a copy of the fire district's code of ethics to be posted publicly and conspicuously in each building under such district's control. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code, nor the enforcement of provisions thereof.

3. Repealed by L.2014, c. 490, § 3, eff. Dec. 17, 2014.

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Credits

(Added L.1964, c. 946, § 2. Amended L.1969, c. 646, § 2; L.1970, c. 1019, § 3; L.1987, c. 813, §§ 10, 11; L.2006, c. 238, § 1, eff. June 1, 2006; L.2014, c. 490, § 3, eff. Dec. 17, 2014.)

McKinney's General Municipal Law § 806, NY GEN MUN § 806
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McKinney's General Municipal Law § 807

§ 807. Posting of statute

Effective: July 7, 2008
Currentness

The chief executive officer of each municipality shall cause a copy of sections eight hundred through eight hundred nine of this article to be kept posted in each public building under the jurisdiction of his or her municipality in a place conspicuous to its officers and employees. Failure to post any such copy shall have no effect on the duty of compliance with this article, nor with the enforcement of the provisions thereof.

Credits
(Added L.1964, c. 946, § 2. Amended L.1970, c. 1019, § 4; L.2008, c. 236, § 1, eff. July 7, 2008.)

McKinney's General Municipal Law § 807, NY GEN MUN § 807
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McKinney's General Municipal Law § 808

§ 808. Boards of ethics

Effective: December 17, 2014
Currentness

1. The governing body of any county may establish a county board of ethics and appropriate moneys for maintenance and personal services in connection therewith. The members of such board of ethics shall be appointed by such governing body except in the case of a county operating under an optional or alternative form of county government or county charter, in which case the members shall be appointed by the county executive or county manager, as the case may be, subject to confirmation by such governing body. Such board of ethics shall consist of at least three members, a majority of whom shall not be officers or employees of such county or municipalities wholly or partially located in such county and at least one of whom shall be an elected or appointed officer or employee of the county or a municipality located within such county. The members of such board shall receive no salary or compensation for their services as members of such board and shall serve at the pleasure of the appointing authority.

2. The board shall render advisory opinions to officers and employees of municipalities wholly or partly within the county with respect to this article and any code of ethics adopted pursuant hereto. Such advisory opinions shall be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the board may prescribe and shall have the advice of counsel employed by the board, or if none, the county attorney. In addition, it may make recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto upon the request of the governing body of any municipality in the county.

3. The governing body of any municipality other than a county may establish a local board of ethics and, where such governing body is so authorized, appropriate moneys for maintenance and personal services in connection therewith. A local board shall have all the powers and duties of and shall be governed by the same conditions as a county board of ethics, except that it shall act only with respect to officers and employees of the municipality that has established such board or of its agencies. The members of a local board shall be appointed by such person or body as may be designated by the governing body of the municipality to serve at the pleasure of the appointing authority and such board shall consist of at least three members, a majority of whom are not otherwise officers or employees of such municipality. Such board shall include at least one member who is an elected or appointed municipal officer or employee.

4. The county board of ethics shall not act with respect to the officers and employees of any municipality located within such county or agency thereof, where such municipality has established its own board of ethics, except that the local board may at its option refer matters to the county board.

5. A board of ethics of a political subdivision (as defined in section eight hundred ten of this article) and of any other municipality, which is required by local law, ordinance or resolution to be, or which pursuant to legal authority, in practice is, the repository

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for completed annual statements of financial disclosure shall file a statement with the clerk of its municipality, that it is the authorized repository for completed annual statements of financial disclosure.

Credits

(Added L.1964, c. 946, § 2. Amended L.1965, c. 1043, § 5; L.1970, c. 1019, § 5; L.1987, c. 813, § 12; L.2014, c. 490, § 4, eff. Dec. 17, 2014.)

McKinney's General Municipal Law § 808, NY GEN MUN § 808
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McKinney's General Municipal Law § 809

§ 809. Disclosure in certain applications

Currentness

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

(a) is the applicant, or

(b) is an officer, director, partner or employee of the applicant, or

(c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or

(d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. “Party officer” shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four of section two of the election law. [1]

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

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(Added L.1969, c. 646, § 3. Amended L.1970, c. 825, §§ 1, 2.)

Footnotes

1 Now Election Law § 1-104, subd. 5.

McKinney's General Municipal Law § 809, NY GEN MUN § 809

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McKinney's General Municipal Law § 810

§ 810. Additional definitions

Effective: December 17, 2014
Currentness

As used in sections eight hundred eleven and eight hundred twelve of this article:

1. The term "political subdivision" shall mean a county, city, town or village having a population of fifty thousand or more and shall include a city with a population of one million or more.

2. The term "local elected official" shall mean an elected official of the political subdivision, except judges or justices of the unified court system.

3. The term "local officer or employee" shall mean the heads (other than local elected officials) of any agency, department, division, council, board, commission, or bureau of a political subdivision and their deputies and assistants, and the officers and employees of such agencies, departments, divisions, boards, bureaus, commissions or councils who hold policy-making positions, as annually determined by the appointing authority and set forth in a written instrument which shall be filed with the appropriate body during the month of February; except that the term "local officer or employee" shall not mean a judge, justice, officer or employee of the unified court system. Members, officers, and employees of each industrial development agency and authority established by this chapter or created by the public authorities law shall be deemed officers or employees of the county, city, village, or town for whose benefit such agency or authority is established or created.

4. The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state.

5. The term "spouse" shall mean the husband or wife of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (a) a judicial order, decree or judgment, or (b) a legally binding separation agreement.

6. The term "local political party official" shall mean:

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(a) any chairman of a county committee elected pursuant to section 2-112 of the election law, or his or her successor in office, who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more;

(b) that person (usually designated by the rules of a county committee as the "county leader" or "chairman of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(i) the principal political, executive and administrative officer of the county committee;

(ii) the power of general management over the affairs of the county committee;

(iii) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(iv) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(v) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law or for the purpose of filling a vacancy or vacancies in the county committee which exist by reason of an increase in the number of election districts within the county occasioned by a change of the boundaries of one or more election districts, taking effect after the election of its members, or for the purpose of determining the districts that the elected members shall represent until the next election at which such members of such committee are elected; provided, however, that in no event shall such power encompass the power of a chairperson of an assembly district committee or other district committee smaller than a county and created by the rules of the county committee, to call a meeting of such district committee for such purpose;

(vi) the power to direct the treasurer of the party to expend funds of the county committee; or

(vii) the power to procure from one or more bank accounts of the county committee the necessary funds to defray the expenses of the county committee; and

(c) the city, town or village chairman or leader of a city, town or village committee of a party as the term party is defined in section 1-104 of the election law, but only with respect to a city, town or village having a population of fifty thousand or more, and only if such chairman or leader received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more. The term chairman or leader

is intended to refer to the person who performs the functions and duties of the chief official of a party in the city, town or village by whatever title designated.

The terms "constituted committee" and "political committee", as used in this subdivision six, shall have the same meanings as those contained in section 14-100 of the election law.

7. The term "relative" shall mean such individual's spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse.

8. The term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the reporting individual.

9. The term "appropriate body" or "appropriate bodies" shall mean the board of ethics for the political subdivision.

10. The term "regulatory agency" shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of the public officers law.

11. The term "ministerial matter" shall have the same meaning as ascribed to such term by subdivision one of section seventy-three of the public officers law.

12. The term "local agency" shall mean:

(a) any county, city, town, village, school district or district corporation, or any agency, department, division, board, commission or bureau thereof; and

(b) any public benefit corporation or public authority not included in the definition of a state agency.

Credits
(Added L.1987, c. 813, § 13. Amended L.1993, c. 356, § 2; L.2013, c. 59, pt. J, § 5, eff. March 28, 2013; L.2014, c. 490, § 5, eff. Dec. 17, 2014.)

McKinney's General Municipal Law § 810, NY GEN MUN § 810
Current through L.2024, chapters 1 to 49, 52, 61 to 112. Some statute sections may be more current, see credits for details.

End of Document

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McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 18. Conflicts of Interest of Municipal Officers and Employees (Refs & Annos)

McKinney's General Municipal Law § 811

§ 811. Promulgation of form of annual statement of financial disclosure; authority of governing body with respect to persons subject thereto

Effective: December 17, 2014
Currentness

1. (a) The governing body of each political subdivision may, not later than January first, nineteen hundred ninety-one, and the governing body of any other municipality may at any time subsequent to the effective date of this section, adopt a local law, ordinance, or resolution: (i) wherein it promulgates a form of annual statement of financial disclosure which is designed to assure disclosure by municipal officers and employees, which for the purposes of this section, the definition for which shall be modified so as to also include a city with a population of one million or more, and (in the case of a political subdivision or any other county, city, town or village) which is designed to assure disclosure by local elected officials and/or by local political party officials of such financial information as is determined necessary by the governing body, or (ii) wherein it resolves to continue the use of an authorized form of annual statement of financial disclosure in use on the date such local law, ordinance or resolution is adopted. In either event, such local law, ordinance or resolution if and when adopted shall specify by name of office or by title or classification those municipal officers and employees and (in the case of a political subdivision or any other county, city, town or village) those local elected officials and/or those local political party officials which shall be required to complete and file such annual statement.

(a-1) In a city with a population of one million or more, such local law, ordinance or resolution shall require, on two or more types of forms for annual statements of financial disclosure, disclosure of information that could reveal potential conflicts of interest as defined by chapter sixty-eight of the New York city charter.

(i) The disclosure required by such law, ordinance or resolution of such city shall, at a minimum, include information about any non-city employment or interests that may give rise to a conflict of interest, including, but not limited to, interests of the filer and his or her spouse or registered domestic partner, and unemancipated children, in: (A) real property located in such city, and (B) positions or business dealings with, financial interests in, or gifts from, any persons or firms or entities engaged in business dealings with such city.

(ii) In any such city, local elected officials and compensated local officers and employees, as defined in subdivisions two and three, respectively, of section eight hundred ten of this article, shall, at a minimum, disclose in addition to the information required by subparagraph (i) of this paragraph: (A) interests in a firm where the value of the interest is ten thousand dollars or more; (B) where the official, officer, or employee holds a policy-making position with such city, membership in the national or state committee of a political party or service as assembly district leader of a political party or service as the chair or as an officer of the county committee or county executive committee of a political party; (C) the names and positions of any spouse or registered domestic partner, child, stepchild, brother, sister, parent or stepparent holding a position with any such city; (D) each volunteer office or position held by the filer or his or her spouse or registered domestic partner with any not-for-profit organization engaged in business dealings with such city, except where the person volunteers only in a non-policymaking, non-

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administrative capacity; and (E) agreements between the filer and any person or firm or entity engaged in business dealings with such city for future payment to or employment of the filer.

(iii) For purposes of this paragraph, the term "firm" shall have the same meaning as set forth in subdivision eleven of section twenty-six hundred one of the New York city charter.

(b) The governing body of a political subdivision or any other county, city, town or village, which requires the completion and filing of either of such forms of annual statements of financial disclosure by local or municipal officers and employees and/or by local elected officials shall have the power, if it so chooses, to require the completion and filing of such annual statements of financial disclosure by local political party officials as if such officials were officers or employees of such county, city, town or village, provided however, that a person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision.

(c) The governing body of a political subdivision or any other county, city, town or village which requires any local or municipal officer or employee or any local elected official or any local political party official to complete and file either of such annual statements of financial disclosure shall have, possess, exercise and enjoy all the rights, powers and privileges attendant thereto which are necessary and proper to the enforcement of such requirement, including but not limited to, the promulgation of rules and regulations pursuant to local law, ordinance or resolution, which rules or regulations may provide for the public availability of items of information to be contained on such form of statement of financial disclosure, the determination of penalties for violation of such rules or regulations, and such other powers as are warranted under the circumstances existing in its county, city, town or village.

(d) The local law, ordinance or resolution, if and when adopted, shall provide for the annual filing of completed statements with the board of ethics of the political subdivision or other municipality and shall contain the procedure for filing such statements and the date by which such filing shall be required. If the board of ethics is designated as the appropriate body, then such local law, ordinance or resolution shall confer upon the board appropriate authority to enforce such filing requirement, including the authority to promulgate rules and regulations. Any such local law, ordinance or resolution shall authorize exceptions with respect to complying with timely filing of such disclosure statements due to justifiable cause or undue hardship. The appropriate body shall prescribe rules and regulations related to such exceptions with respect to extensions and additional periods of time within which to file such statement including the imposition of a time limitation upon such extensions.

(e) Nothing herein shall be construed to prohibit a political subdivision or other municipality from promulgating the form of annual financial disclosure statement set forth in section eight hundred twelve of this article. Promulgation of the same form of annual financial disclosure statement set forth in section eight hundred twelve of this article shall not be deemed an automatic election to be subject to the provisions of such section.

2. In the event that a political subdivision fails by January first, nineteen hundred ninety-one to promulgate, or fails by such date to elect to continue using, a form of annual statement of financial disclosure in the manner authorized in subdivision one of this section then the provisions of section eight hundred twelve of this article shall apply on and after such date to any such political subdivision subject to the provisions of subdivision three of such section eight hundred twelve.

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(Added L.1987, c. 813, § 14. Amended L.2008, c. 41, § 1, eff. April 7, 2008; L.2014, c. 490, § 6, eff. Dec. 17, 2014.)

McKinney's General Municipal Law § 811, NY GEN MUN § 811
Current through L.2024, chapters 1 to 49, 52, 61 to 112. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 18. Conflicts of Interest of Municipal Officers and Employees (Refs & Annos)

McKinney's General Municipal Law § 812

§ 812. Financial disclosure for local elected officials and certain officers and employees of counties, cities, towns and villages

Effective: December 17, 2014
Currentness

1. (a) Any political subdivision or other county, city, town or village to which all of the provisions of this section are made applicable, whether as the result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, shall require (i) each of its local elected officials and local officers and employees, (ii) each local political party official and (iii) each candidate for local elected official with respect to such political subdivision, to file an annual statement of financial disclosure containing the information and in the form set forth in subdivision five of this section except that disclosure requirements for assessors who are not covered by this article shall be governed by the requirements of section three hundred thirty-six of the real property tax law. Such statement shall be filed on or before the fifteenth day of May with respect to the preceding calendar year, except that:

(i) a person who is subject to the reporting requirements of this subdivision and who timely filed with the internal revenue service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year shall be required to file such financial disclosure statement on or before May fifteenth but may, without being subjected to any civil penalty on account of a deficient statement, indicate with respect to any item of the disclosure statement that information with respect thereto is lacking but will be supplied in a supplementary statement of financial disclosure, which shall be filed on or before the seventh day after the expiration of the period of such automatic extension of time within which to file such individual income tax return, provided that failure to file or to timely file such supplementary statement of financial disclosure or the filing of an incomplete or deficient supplementary statement of financial disclosure shall be subject to the notice and penalty provisions of this section respecting annual statements of financial disclosure as if such supplementary statement were an annual statement;

(ii) candidates for local elected official who file designating petitions for nomination at a primary election shall file such statement within seven days after the last day allowed by law for the filing of designating petitions naming them as candidates for the next succeeding primary election;

(iii) candidates for independent nomination for local elected official who have not been designated by a party to receive a nomination shall file such statement within seven days after the last day allowed by law for the filing of independent nominating petitions naming them as candidates for local elected official in the next succeeding general or special or village election; and

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(iv) candidates for local elected official who receive the nomination of a party for a special election or who receive the nomination of a party other than at a primary election (whether or not for an uncontested office) shall file such statement within seven days after the date of the meeting of the party committee at which they are nominated.

(b) As used in this subdivision, the terms "party", "committee" (when used in conjuction [1] with the term "party"), "designation", "primary", "primary election", "nomination", "independent nomination", "ballot" and "uncontested office" shall have the same meanings as those contained in section 1-104 of the election law.

(c) Such statement shall be filed with the appropriate body, as defined in section eight hundred ten of this article.

(d) The appropriate body, as defined in section eight hundred ten of this article, shall obtain from the "board of elections", as such term is defined in section 1-104 of the election law, lists of all candidates for local elected official, and from such lists, shall determine and publish lists of those candidates who have not, within ten days after the required date for filing such statement, filed the statement required by this subdivision.

(e) Local political party officials and any person required to file such statement who commences employment after May fifteenth of any year shall file such statement within thirty days after commencing employment or of taking the position of local political party official, as the case may be.

(f) A person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body, as defined in section eight hundred ten of this article, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by this subdivision.

(g) A person who is subject to the filing requirements of this subdivision from more than one political subdivision within the same county may satisfy the requirements of this subdivision by filing only one annual statement of financial disclosure with the appropriate body (as is required in that county) for the county in which such political subdivisions are located or if such political subdivisions cross one or more county boundary lines, then such single filing may be made for any of the counties in which one of such political subdivisions is located provided, however, that the appropriate bodies (as required by such other counties) are notified of the name of the county of such compliance by the person who is subjected to the filing requirements of this subdivision, within the time limit for filing specified in this subdivision.

(h) A local elected official who is simultaneously a candidate for local elected official shall satisfy the filing deadline requirements of this subdivision by complying only with the deadline applicable to one who holds such local elected office.

(i) A candidate whose name will appear on both a party designating petition and on an independent nominating petition for the same office or who will be listed on the election ballot for the same office more than once shall satisfy the filing deadline requirements of this subdivision by complying with the earliest applicable deadline only.

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2. The governing body of a county, city, town or village having a population of less than fifty thousand may by local law or ordinance elect to be subject to the provisions of this section. In such event, any such city, county, town or village shall be deemed to be a political subdivision under this section.

3. Any political subdivision or other county, city, town or village to which all of the provisions of this section are made applicable, whether as a result of the provisions contained in subdivision two of section eight hundred eleven of this article or as a result of an election to be subject to the provisions of this section as permitted by subdivision two of this section, may elect to remove itself from the ambit of all (but not some) provisions of this section (other than this subdivision) by adopting a local law, ordinance or resolution specifically referring to the authority conferred by this subdivision. Provided, however, that the terms of such local law, ordinance or resolution shall be subject to the following conditions and limitations:

(a) Such local law, ordinance or resolution must provide for the promulgation of a form of an annual statement of financial disclosure described in subdivision one of section eight hundred eleven of this article for use with respect to information the governing body requires to be reported for the calendar year next succeeding the year in which such local law, ordinance or resolution is adopted and for use with respect to information required to be reported for subsequent calendar years; and shall provide for the filing of completed statements with the board of ethics of the political subdivision or other municipality.

(b) Such removal shall not be effective with respect to the annual financial disclosure statement for the calendar year in which the local law, ordinance or resolution is adopted (the filing of which statement is due on May fifteenth of the next succeeding year with certain exceptions), nor shall such removal be effective with respect to any required annual financial disclosure statement for the immediately preceding calendar year (the filing of which statement is due on May fifteenth (with certain exceptions) of the calendar year in which such local law, ordinance or resolution is adopted), nor shall such removal be effective with respect to any other preceding year but such removal shall apply first to the statement which would have been due on May fifteenth (with certain exceptions) of the second year next succeeding the year in which such local law, ordinance or resolution is adopted, and such removal shall apply thereafter to subsequent statements otherwise due pursuant to this section.

(c) Such removal shall not affect the power to impose, or the imposition of, a penalty for failure to file, or for false filing, of any required annual financial disclosure statement.

(d) The local law, ordinance or resolution referred to in paragraph (a) of this subdivision or any other such local law, ordinance or resolution so adopted may make provision for any other right, power or privilege granted by subdivision one of such section eight hundred eleven.

4. Nothing contained in this section shall be construed as precluding the governing body of a political subdivision from requiring additional and/or more detailed items of financial disclosure than are set forth in subdivision five hereinbelow.

5. The annual statement of financial disclosure shall contain the information and shall be in the form set forth hereinbelow:

ANNUAL STATEMENT OF FINANCIAL DISCLOSURE FOR%tc

(Insert Name of Political Subdivision) - (For calendar year __________)

1. Name ....

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2. (a) Title of Position ....

(b) Department, Agency or other Governmental Entity ....

(c) Address of Present Office ....

(d) Office Telephone Number ....

3. (a) Marital Status ____________________________. If married, please give spouse's full name including maiden name where applicable.

_________________________________.

(b) List the names of all unemancipated children.

____

____

____

____

____

Answer each of the following questions completely, with respect to calendar year __________, unless another period or date is otherwise specified. If additional space is needed, attach additional pages.

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A - under $5,000; Category B - $5,000 to under $20,000; Category C - $20,000 to under $60,000; Category D - $60,000 to under $100,000; Category E - $100,000 to under $250,000; and Category F - $250,000 or over. A reporting individual shall indicate the Category by letter only.

For the purposes of this statement, anywhere the term "local agency" shall appear such term shall mean a local agency, as defined in section eight hundred ten of the general municipal law, of the political subdivision for which this financial disclosure statement has been filed.

4. (a) List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, if known, and excluding membership positions, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York or (insert name of political subdivision). If said entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Organization	State or Local Agency

(b) List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, if known, and excluding membership positions, whether compensated or not, held by the spouse or unemancipated child of the reporting individual, with any firm, corporation, association, partnership, or other organization other than the State of New York. If said entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the

business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Organization	State or Local Agency

5. (a) List the name, address and description of any occupation, employment, trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency.

Position	Name & Address of Organization	Description	State or Local Agency

(b) If the spouse or unemancipated child of the reporting individual was engaged in any occupation, employment, trade, business or profession which activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of any such agency.

Position	Name & Address of Organization	Description	State or Local Agency

6. List any interest, in excess of $1,000, excluding bonds and notes, held by the reporting individual, such individual's spouse or unemancipated child, or partnership of which any such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency and include the name of the entity which holds such interest and the relationship of the reporting individual or such individual's spouse or such child to such entity and the interest in such contract. Do not list any interest in any such contract on which final payment has been made and all obligations under the contract except from guarantees and warranties have been performed, provided, however, that such an interest must be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do not list any interest in a contract made or executed by a state agency after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

Self, Spouse or Child	Entity Which Held Interest in Contract	Relationship to Entity and Interest in Contract	Contracting State or Local Agency	Category of Value of Contract

7. List any position the reporting individual held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader. The term “party” shall have the same meaning as “party” in the election law. The term “political organization” means any party or independent body as defined in the election law or any organization that is affiliated with or a subsidiary of a party or independent body.

8. (a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

(b) List the name, principal address and general description or the nature of the business activity of any entity in which the reporting individual or such individual's spouse had an investment in excess of $1,000 excluding investments in securities and interests in real property.

9. List each source of gifts, excluding campaign contributions, in excess of $1,000, received during the reporting period for which this statement is filed by the reporting individual or such individual's spouse or unemancipated child from the same donor, excluding gifts from a relative. Include the name and address of the donor. The term

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"gifts" does not include reimbursements, which term is defined in item 10. Indicate the value and nature of each such gift.

Self, Spouse or Child	Name of Donor	Address	Nature of Gift	Category of Value of Gift

10. Identify and briefly describe the source of any reimbursements for expenditures, excluding campaign expenditures and expenditures in connection with official duties reimbursed by the political subdivision for which this statement has been filed, in excess of $1,000 from each such source. For purposes of this item, the term "reimbursements" shall mean any travel-related expenses provided by nongovernmental sources and for activities related to the reporting individual's official duties such as, speaking engagements, conferences, or factfinding events. The term "reimbursements" does not include gifts reported under item 9.

Source	Description

11. List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or other beneficial interest, including retirement plans other than retirement plans of the state of New York or the city of New York, and deferred compensation plans established in accordance with the internal revenue code, in which the reporting individual held a beneficial interest in excess of $1,000 at any time during the preceding year. Do not report interests in a trust, estate or other beneficial interest established by or for, or the estate of, a relative.

Identity	Category of Value *

* The value of such interest shall be reported only if reasonably ascertainable.

12. (a) Describe the terms of, and the parties to, any contract, promise, or other agreement between the reporting individual and any person, firm, or corporation with respect to the employment of such individual after leaving office or position (other than a leave of absence).

    (b) Describe the parties to and the terms of any agreement providing for continuation of payments or benefits to the reporting individual in excess of $1,000 from a prior employer other than the political subdivision for which this statement is filed. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buy-out agreements; severance payments; etc.)

13. List below the nature and amount of any income in excess of $1,000 from each source for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, salary for government employment, income from other compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

Self/ Spouse	Source	Nature	Category of Amount

14. List the sources of any deferred income in excess of $1,000 from each source to be paid to the reporting individual following the close of the calendar year for which this disclosure statement is filed, other than deferred compensation reported in item 11 hereinabove. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

Source	Category of Amount

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15. List each assignment of income in excess of $1000, and each transfer other than to a relative during the reporting period for which this statement is filed for less than fair consideration of an interest in a trust, estate or other beneficial interest, securities or real property, by the reporting individual, in excess of $1000, which would otherwise be required to be reported herein and is not or has not been so reported.

Item Assigned or Transferred	Assigned or Transferred to	Category of Value

16. List below the type and market value of securities held by the reporting individual or such individual's spouse from each issuing entity in excess of $1,000 at the close of the taxable year last occurring prior to the date of filing, including the name of the issuing entity exclusive of securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed only if the reporting individual has knowledge thereof except where the reporting individual or the reporting individual's spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by the reporting individual because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the reporting individual. Securities of which the reporting individual or the reporting individual's spouse is the owner of record but in which such individual or the reporting individual's spouse has no beneficial interest shall not be listed. Indicate percentage of ownership if the reporting person or the reporting person's spouse holds more than five percent of the stock of a corporation in which the stock is publicly traded or more than ten percent of the stock of a corporation in which the stock is not publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent of the stock of which is owned or controlled by the reporting individual or such individual's spouse. For the purpose of this item the term “securities” shall mean bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and certificates of deposits and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in item 8 (a) or if the security is corporate stock, not publicly traded, in a trade or business of a reporting individual or a reporting individual's spouse.

Self/ Spouse	Issuing Entity	Type of Security	Category of Market Value as of the close of the taxable year last occurring prior to the filing of this statement	Percentage of corporate stock owned or controlled

17. List below the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in excess of $1,000 is held by the reporting individual or the reporting individual's spouse. Also list real property owned for investment purposes by a corporation more than fifty percent of the stock of which is owned or controlled by the reporting individual or such individual's spouse. Do not list any real property which is the primary or secondary personal residence of the reporting individual or the reporting individual's spouse, except where there is a co-owner who is other than a relative.

Self/ Spouse/ Other Party	Location	Size	General Nature	Acquisition Date	Category of Market Value	Percentage of Owner ship

18. List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in excess of $1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 hereinabove. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

Name of Debtor	Type of Obligation, Date Due, and Nature of Collateral, if any	Category of Amount

19. List below all liabilities of the reporting individual and such individual's spouse, in excess of $5,000 as of the date of filing of this statement, other than liabilities to a relative. Do not list liabilities incurred by, or guarantees made

by, the reporting individual or such individual's spouse or by any proprietorship, partnership or corporation in which the reporting individual or such individual's spouse has an interest, when incurred or made in the ordinary course of the trade, business or professional practice of the reporting individual or such individual's spouse. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. A reporting individual shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Revolving charge account information shall only be set forth if liability thereon is in excess of $5,000 at the time of filing. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

Name of Creditor or Guarantor	Type of Liability and Collateral, if any	Category of Amount

The requirements of law relating to the reporting of financial interests are in the public interest and no adverse inference of unethical or illegal conduct or behavior will be drawn merely from compliance with these requirements.

(Signature of Reporting Individual)　　　　Date (month/day/year)

6. A reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this section shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty hereunder shall be made by the appropriate body, as such term is defined in section eight hundred ten of this article. For a violation of this subdivision, other than for conduct which constitutes a violation of subdivision twelve of section seventy-three of the public officers law, the board of ethics of the political subdivision or other municipality may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of “value” or “amount” reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, except that the appointing authority may impose disciplinary action as otherwise provided by law. Each appropriate body, as such term is defined in section eight hundred ten of this article, shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of the civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the appropriate body, pursuant to article seventy-eight of the civil practice law and rules.

Credits

(Added L.1987, c. 813, § 15. Amended L.2004, c. 85, § 1, eff. May 18, 2004; L.2014, c. 490, § 7, eff. Dec. 17, 2014.)

Footnotes

1 So in original. (word misspelled.)

McKinney's General Municipal Law § 812, NY GEN MUN § 812

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Current through L.2024, chapters 1 to 49, 52, 61 to 112. Some statute sections may be more current, see credits for details.

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122 Misc.2d 531, 471 N.Y.S.2d 521

In the Matter of Raymond Conrad et al., Petitioners,
v.
Hadwen P. Hinman, as Mayor of the
Village of Mexico, et al., Respondents

Supreme Court, Onondaga County
January 17, 1984

CITE TITLE AS: Matter of Conrad v Hinman

HEADNOTES

Municipal Corporations
Zoning
Conflict of Interest by Member of Board of Trustees

(1) A motion for a judgment directing respondent Mayor and village board of trustees to rescind a variance and determining that no valid action was taken by a properly constituted board of trustees is granted, where one of the owners of the subject property was a member of the board of trustees and, as such, refused to disqualify herself and in fact cast the decisive vote granting the variance; in addition to the fact that one of the owners was a board member, the intended purchaser of the property was a company by which she was employed, and these allegations support an inference of actual or apparent economic impropriety (see General Municipal Law, § 809).

APPEARANCES OF COUNSEL

Ali, Pappas & Cox, P. C. (*Lucien Ali* of counsel), for petitioners. Respondents *pro se*.

OPINION OF THE COURT

Thomas J. Murphy, J.

By notice of motion dated November 18, 1983, petitioners above named move for a judgment directing respondents to rescind the zoning variance granted to Robert R. Murray and Mildred Murray on October 3, 1983, and reversing and annulling any alleged determination, and determining that no valid action was taken by a properly constituted Board of Trustees of the Village of Mexico.

For the following reasons set forth in this decision, the court grants petitioners' motion.

The petitioners are owners of land and buildings in the Village of Mexico, State of New York, which properties are in close proximity to or said properties abut, adjoin, or are adjacent to land located at an address commonly known as the corner of Church Street and Munger Hill Road in the Village of Mexico, State of New York, and have standing to bring the instant proceeding.

It appears that prior to October 3, 1983, subject properties in the Village of Mexico were zoned for residential use only. This restriction on use was imposed by resolution of the Board of Trustees of the Village of Mexico on the 17th ***532** day of May, 1957, which stated, in part: “Other customary accessory uses and buildings provided that such uses are incidental to the principal use and do not include any activity commonly conducted as a business.” (Art IV, § 2, par 9.)

The petitioners allege that prior to July 28, 1983, Robert R. Murray and Mildred Murray requested a variance of the above zoning ordinance for their property described in article IV above for the purpose of erecting a structure to be used solely for the conduct of business. On or about July 28, 1983, the Zoning Board of Appeals for the Village of Mexico denied said variance. At a public meeting of the Village of Mexico Zoning Board of Appeals on August 24, 1983, the aforementioned request for a zoning ordinance was presented to the board with the result that the board declined to reverse its prior position to deny the variance.

Petitioners further allege that on August 31, 1983, Robert R. Murray, individually and through his attorney, notified the Mayor of the Village of Mexico that he intended to petition the village board of trustees for a special permit for business use of the property owned by himself and Mildred Murray. The Mayor of the Village of Mexico, Hadwen P. Hinman, afforded Robert R. Murray time to present the petition at the next meeting of the village board of trustees.

Mildred Murray, co-owner of the subject property, was at that time and still is a member of the Board of Trustees of the Village of Mexico.

At a regular meeting of the Board of Trustees of the Village of Mexico conducted on September 21, 1983, a request for a variance made by Robert R. Murray and Mildred Murray was heard and a public hearing was set for October 3, 1983, at 7:00 p.m.

The public hearing on the requested zoning hearing was held on October 3, 1983 at 7:00 p.m., at which time the petitioners presented a petition signed by 44 residents of the Village of Mexico who desire to keep the subject property zoned residential. Apparently, following the above-mentioned public hearing, the Board of Trustees for the Village of Mexico conducted a regular meeting to conduct a vote on the requested zoning variance. ***533**

At the regular meeting the Mayor of the Village of Mexico announced that Mildred Murray, as co-owner of the property to be rezoned, could not vote on the matter due to her clear "conflict of interest" and the prohibition against such a conflict set forth in subdivision 1 of section 809 of the New York General Municipal Law. At the regular meeting, the board of trustees received an opinion letter from the Village Attorney describing how the General Municipal Law could be violated by permitting a board member to cast a vote granting a zoning variance for property in which the member has an ownership or financial interest. The moving affidavit states that upon receiving the above-mentioned opinion letter, Mildred Murray stated "that she would prefer not to vote, but she felt that she must in the best interest of the Village".

It is alleged that Mildred Murray was, on October 3, 1983, and still is, employed as a secretary for Farm Credit Service in Mexico, New York, and that Mildred Murray had previously agreed to erect a commercial building on her property and located at the corner of Church Street and Munger Hill Road to be sold or leased to her said employer, Farm Credit Service, for use as a commercial business in a residential neighborhood.

The Board of Trustees of the Village of Mexico was in full session on October 3, 1983 and was composed of five members. At the regular meeting of the board of trustees to hear the petition for zoning variance by Robert R. Murray and Mildred Murray, the vote granting such variance was split 3 to 2 in favor of granting the variance. Mildred Murray placed her vote at the regular meeting in favor of granting the zoning variance for property co-owned by her. The vote placed by Mildred Murray was the tie-breaking and decisive vote in granting the zoning variance to Robert R. Murray and Mildred Murray for a change in the use for the property from residential to commercial.

The General Municipal Law makes an inquiry into a conflict of interest appropriate in the proper case by requiring that "[e]very application ... for a ... change of zoning ... shall state the name, residence and the nature and extent of the interest of any ... officer ... of such municipality ... in the person, partnership or association ***534** making such application ... to the extent known to such applicant." (General Municipal Law, § 809, subd 1.)

The statute goes on to define four areas of specific "interest" to which this provision applies. Three involve ownership of or direct employment of the applicant, and the fourth involves contractual relationships with the applicant dependent or contingent upon the success of the application. (General Municipal Law, § 809, subd 2, pars [a]-[d].)

In *Matter of Tuxedo Conservation & Taxpayers Assn. v Town Bd*. (96 Misc 2d 1, 9, affd 69 AD2d 320), the court, finding that section 809 is not exclusive but speaks only to "those situations in which there is a *conclusive presumption* of a conflicting interest" held that a board member should have disqualified himself from voting to grant a construction permit to a client of his advertising agency. Similarly, there are numerous out-of-State opinions. (See, generally, Zoning -- Disqualification of Officer, Ann., 10 ALR3d 694, where courts have set aside zoning decisions because of conflict of interest where economic ties of varying degrees were found.)

In this case, there are unrefuted allegations which would support an inference of actual or apparent economic impropriety. It is clear that Mildred Murray was co-owner of the property for which she was voting for a change in use. In addition, the intended purchaser of the property was a company by which she was employed.

"The conflicts encompassed by article 18 [of the General Municipal Law] ... involve pecuniary and material interests". (*Webster Assoc. v Town of Webster*, 59 NY2d 220, 227, citing *Matter of Tuxedo Conservation & Taxpayers Assn. v Town Bd., supra*; see, also, e.g., *Matter of Concerned Citizens Against Crossgates v Town of Guilderland Zoning Bd. of Appeals*, 91 AD2d 763.)

The *Tuxedo* case quotes from Chief Judge Cardozo in his opinion in *Meinhard v Salmon* (249 NY 458, 464): "A trustee is held to something stricter than the morals of the

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marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."

It is this court's opinion that Mildred Murray should have disqualified herself from voting at the October 3, ***535** 1983 meeting. "It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance". (*Smith v Skagit County*, 75 Wn 2d 715, 739.)

For all the above reasons, the court grants the petitioners' application and hereby annuls the October 3, 1983, action of the town board. ***536**

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109 A.D.2d 281, 491 N.Y.S.2d 358

In the Matter of Alexander E. Zagoreos et al., Respondents,
v.
Lucien H. Conklin et al., Respondents, and Orange and Rockland Utilities, Inc., Intervenor-Appellant. (Proceeding No. 1.)
In the Matter of Alexander E. Zagoreos et al., Respondents,
v.
Alfred Lindsell et al., Respondents, and Orange and Rockland Utilities, Inc., Intervenor-Appellant. (Proceeding No. 2.)
In the Matter of Orange and Rockland Utilities, Inc., Appellant,
v.
Lucien H. Conklin et al., Respondents, and Alexander E. Zagoreos et al., Intervenors-Respondents. (Proceeding No. 3.)
In the Matter of Orange and Rockland Utilities, Inc., Appellant,
v.
Alfred Lindsell et al., Respondents, and Alexander E. Zagoreos et al., Intervenors-Respondents. (Proceeding No. 4.)

Proceeding Nos. 1, 2, 3, 4
Supreme Court, Appellate Division, Second Department, New York
July 1, 1985

CITE TITLE AS: Matter of Zagoreos v Conklin

SUMMARY

Appeal, in proceeding No. 1, from a judgment of the Supreme Court (Russell R. Leggett, J.), entered June 14, 1983, as amended June 23, 1983 in Rockland County, which, in a proceeding pursuant to CPLR article 78, (1) annulled a determination of the Town Board of Stony Point granting intervenor a development permit, and (2) denied a motion by intervenor to assert a cross claim for a declaratory judgment.

Appeal, in proceeding No. 2, from a judgment of the Supreme Court (Russell R. Leggett, J.), entered June 14, 1983, as amended June 23, 1983, in Rockland County, which, in a proceeding pursuant to CPLR article 78, (1) annulled a determination of the Zoning Board of Appeals of the Town of Stony Point granting intervenor certain variances, and (2) denied a motion by intervenor to assert a cross claim for a declaratory judgment.

Appeal, in proceeding No. 3, from a judgment of the Supreme Court (Theodore Dachenhausen, J.), entered March 5, 1984 in Rockland County, which, in a proceeding pursuant to CPLR article 78, (1) denied a petition to nullify a determination of respondent Town Board of Stony Point denying an application by petitioner for a development permit, and (2) granted a cross claim by intervenors for a declaratory judgment.

Appeal, in proceeding No. 4, from a judgment of the Supreme Court (Theodore Dachenhausen, J.), entered March 5, 1984 in Rockland County, which, in a proceeding pursuant to CPLR ***282** article 78, (1) denied a petition to annul the determination of respondent Zoning Board of Appeals of the Town of Stony Point denying certain zoning variances, and (2) granted a cross claim by intervenors for a declaratory judgment.

HEADNOTES

Municipal Corporations
Zoning
Jurisdiction of Town Zoning Board of Appeals

(1) A Town Zoning Board of Appeals properly treated as a nullity its vote denying an application by a utility for the requisite variances for construction of structures necessary to effectuate conversion of oil-burning generating units into coal-burning units which vote was taken despite the fact that the utility had been previously notified that the matter was being removed from the agenda because no recommendation concerning the project had yet been forwarded by the County Planning Board; the utility was deprived of an opportunity to appear at the proceeding and the Zoning Board of Appeals lacked jurisdiction to determine the matter until it had received the written recommendation and statement of reasons from the County Planning Board or 30 days had passed without a response from that body. Moreover, under the circumstances, it was proper for the Zoning Board of

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Appeals to reconsider the matter without a rehearing such as would have been required had the prior vote been effective.

Municipal Corporations
Zoning
Zoning Board of Appeals--Conflict of Interest

(2) Where the decisive votes at a meeting of a Town Zoning Board of Appeals granting an application by a utility for a variance and at a meeting of the Town Board approving an application by the utility for a development permit were cast by employees of the utility, said determinations were properly set aside because of a perceived conflict of interest. Although the mere fact of employment might not require disqualification in every instance, the failure of the utility's employees to disqualify themselves was improper; in light of the unusual nature of the applications and the substantial controversy surrounding the matter, it was crucial that the public be assured that the decision would be made by town officials completely free to exercise their best judgment of the public interest, without any suggestion of self-interest or partiality; the likelihood that employment by the utility could have influenced the employees' judgment is too great to ignore.

Municipal Corporations
Zoning
Use Variance for Modification of Power Plant

(3) To establish unnecessary hardship justifying a use variance for the modification of an existing power plant, a public utility must prove that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, which make it more feasible to modify the plant than to use alternative sources of power such as may be provided by other facilities. Thus, the denial of a use variance application by a utility for the proposed conversion of two oil-burning generating units into coal-burning units cannot be deemed arbitrary and capricious since the utility, having failed to show that conversion was necessary to provide safe and adequate service, did not meet its burden of proving that strict compliance with the zoning ordinance would impose an unnecessary hardship upon it; evidence that the proposed modification would allow the utility to render more economical service is insufficient to meet the burden. ***283** Moreover, the utility was not entitled to the variance simply because the conversion project was included in the now defunct State Energy Master Plan (Energy Law former §5-110).

Municipal Corporations
Town Board
Denial of Development Permit

(4) The tentative nature of a utility's plan for disposal of the ash waste which would be produced by one of its plants following a proposed conversion of two oil-burning generating units into coal-burning units was a valid matter of concern for the Town Board in reviewing the utility's site plan and provides adequate support for the Board's denial of the utility's proposed resolution for a large scale development permit required prior to the conversion. That the proposed resolution was conditioned on later approval of a disposal site does not render its defeat arbitrary and capricious, since it was not unreasonable for the Board members to deny the application while the question remained open rather than approve it on condition; nor does the subsequent decision of the Department of Environmental Conservation (DEC) approving utilization of an adjacent quarry as a disposal site automatically authorize the utility to construct and operate the waste disposal facility, for that decision does not preclude the town from subsequently imposing higher or additional standards or regulations for waste disposal than those promulgated by the DEC. Moreover, since the Town Board proceedings took place prior to the effective date of the amendment of General Municipal Law § 239-m, referral of the matter to the County Planning Board was not required.

APPEARANCES OF COUNSEL

LeBoeuf, Lamb, Lieby & MacRae (*G. S. Peter Bergen, Kimba M. Wood, Mary Jo Eyster, Molly S. Boast* and *Dennis P. Harkawik* of counsel), for appellant and intervenor-appellant in the above-entitled proceedings.
Doig, Cornell & Mandel (*J. Martin Cornell* of counsel), for petitioners-respondents and intervenors-respondents in the above-entitled proceedings.

OPINION OF THE COURT

Lazer, J. P.

At issue here are the efforts of Orange and Rockland Utilities, Inc. (O & R) to obtain municipal approval for the construction of several structures necessary to effectuate conversion of two oil-burning generating units into coal-burning units at its Lovett Plant in the Town of Stony Point. The proposed conversion was included in the State Energy Master Plan (SEMP) and O & R was successful in obtaining approval of a final environmental impact statement (FEIS) as well as several necessary permits from the Department of Environmental Conservation (DEC). The validity of the DEC decision was previously before this court and was upheld (*Matter of Environmental Defense Fund v. Flacke*, 96 AD2d 862). The permits issued and the FEIS approval by the DEC envisioned the installation of various pollution ***284** control devices, including a 475-foot smokestack, two electrostatic precipitators, ash silos and wastewater treatment facilities.

Because the proposed construction involved the extension of a prior nonconforming use located in a general flood plain zone and would also violate the town zoning ordinance with respect to lot width, lot coverage, minimum side yard, minimum rear yard and height to yard ratio, use and area variances were a prerequisite to any construction by O & R. Furthermore, since the site was larger than one acre, a large scale development permit from the Town Board was also necessary. As these appeals derive from O & R's inability to obtain and retain the requisite variances and permit, resolution of the issues requires us to examine the always delicate balance between the right of a public utility to modify its operation where necessary to properly serve the public and the power of a locality to regulate such modification. Initially, however, we must determine whether certain proceedings before the Zoning Board of Appeals (ZBA) and the Town Board were fatally tainted by a conflict of interest arising from the participation in these proceedings of several employees of O & R who were also members of those public bodies.

I

To briefly summarize a procedural morass of substantial proportions, after the town building inspector denied its request for a building permit, O & R applied to the ZBA for the requisite variances and to the Town Board for a development permit. On August 5, 1982, the ZBA voted on the variance application despite the fact that its chairman had previously notified O & R that the matter was being removed from the agenda because no recommendation concerning the conversion project had yet been forwarded by the Rockland County Planning Board (*see*, General Municipal Law §239-m). Nevertheless, during the ZBA meeting a member of the public told the Board members that the County Planning Board had recommended disapproval that very day and the ZBA acceded to vociferous requests that, although no official representative of O & R was present, it vote on the matter immediately. The vote was 4-to-2 in favor of the variance application. Despite this, the measure was deemed defeated because a variance could not be approved over an adverse recommendation by the County Planning Board unless a majority plus one of the seven-member ZBA voted in favor of it (*see*, General Municipal Law §239-m).

Reasoning that the 4-to-2 vote taken on August 5, 1982 was a nullity because of the lack of notice to O & R, the ZBA decided to ***285** reconsider the matter without holding another public hearing. Before any further vote of the ZBA, the County Planning Board issued a decision recommending rejection of the project; however, upon submission of additional information which the ZBA had originally failed to forward to it, the County Planning Board reconsidered the matter and then voted 3-to-3 on the approval resolution. This tie vote resulted in the County Planning Board informing the ZBA that it was making no recommendation on the proposal. As a result, the variance application could be approved by a simple majority of four. On September 30, 1982, the ZBA approved the application by a 5-to-2 vote. Several residents of Stony Point and interested groups (the residents) then commenced a CPLR article 78 proceeding (proceeding No. 2) to challenge the issuance of the variances. Special Term set aside the September 30 vote on the ground that 2 of the 5 ZBA members who had voted in favor of O & R's application were employees of O & R and thus the proceeding was tainted by an improper conflict of interest. O & R, which was allowed to intervene in the proceeding, appeals from that judgment.

The ZBA did not appeal, however, and instead reconsidered the application. On July 21, 1983, with the two O & R employees abstaining, the ZBA voted 3-to-1 in favor of the application. Since the three favorable votes did not constitute a majority of the seven-person ZBA, the application was defeated. O & R then commenced an article 78 proceeding (proceeding No. 4) contesting the denial. The residents were permitted to intervene and cross-moved for a judgment declaring the denial to be valid. Special Term denied O & R's request and granted the residents' application for declaratory relief. O & R also appeals from that judgment. Although the

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ZBA has elected not to file a brief on appeal, the residents have done so.

The application to the Town Board for a large scale development permit met essentially the same fate. On October 5, 1982, the five-member Town Board voted 3-to-2 in favor of the application, without referring it to the County Planning Board. One member of the Town Board who voted in favor of the permit was an O & R employee. The residents then commenced an article 78 proceeding contesting the Town Board's action (proceeding No. 1). That decision was nullified by Special Term on the ground of conflict of interest, and O & R, which had been allowed to intervene, appeals from that judgment as well. This time it was the Town Board that chose to reconsider the application on remittitur rather than appeal. With the O & R employee abstaining, the application was defeated by a 2-to-2 vote on August 9, 1983. O & R commenced an article 78 proceeding challenging ***286** the denial (proceeding No. 3). Once again, the residents intervened seeking a declaration that the Board's action was valid. Special Term denied O & R's request that it nullify the Board's determination and instead rendered a judgment declaring the action to be valid. O & R's appeal from this judgment also is before us and is opposed by the residents. The Town Board has not filed a brief.

II

(1)At the outset, we note that the ZBA correctly decided that its original August 5, 1982 vote was a nullity. This was so both because O & R had been deprived of an opportunity to appear at that proceeding (*see*, Town Law §267; 2 Anderson, New York Zoning Law and Practice §§ 25.08, 25.09 [3d ed]) and because the ZBA lacked jurisdiction to determine the matter until it had received the written recommendation and statement of reasons from the County Planning Board or 30 days had passed without a response from that body (*see*, General Municipal Law §239-m; *Matter of Voelckers v. Guelli*, 58 NY2d 170, 175-176; *Matter of Asma v. Curcione*, 31 AD2d 883; *Bloom v. Town Bd.*, 80 AD2d 823, 824-825; 2 Anderson, New York Zoning Law and Practice § 19.09, at 34 [3d ed]). Under the circumstances, it was proper for the ZBA to reconsider the matter without a rehearing such as would have been required had the prior vote been effective (*see*, Town Law §267 [6]). Accordingly, we turn directly to the question of whether the September 30, 1982 determination of the ZBA granting the variances and the October 5, 1982 vote of the Town Board approving the large scale development permit application were fatally tainted by the fact that in both cases the decisive votes were cast by Board members who were also employees of O & R. We conclude that Special Term was correct in setting aside those determinations because of the perceived conflict of interest.

At the September 30, 1982 meeting of the ZBA, the decisive votes in favor of O & R's application were cast by two ZBA members who were employed by O & R as a repairman and a supervisor of rubber goods testing, respectively. Similarly, the determinative vote at the October 5, 1982 Town Board meeting was cast by an O & R training administrator. O & R correctly contends that these individuals did not act in violation of the specific provisions of General Municipal Law article 18 dealing with conflicts of interest by municipal officers and employees. Nonetheless, O & R itself appears to have violated General Municipal Law § 809, which, *inter alia*, requires that every application for a variance list the name of any municipal officer ***287** or employee who is also an employee of the applicant. The record does not indicate that such information was provided on O & R's applications. The employment status of the three O & R employees was disclosed prior to the votes, however, and in the absence of a real or significant appearance of a conflict of interest, we would not deem such a purely technical violation of the statute to be a fatal defect, standing alone (*cf. Glen Head-Glenwood Landing Civic Council v. Town of Oyster Bay*, 109 Misc 2d 376, 389-390, *affd on other grounds* 88 AD2d 484).

It is not necessary, however, that a specific provision of the General Municipal Law be violated before there can be an improper conflict of interest. Thus, we have previously held that an officer of an advertising firm could not vote on a zoning application by a subsidiary of one of his firm's clients, despite the absence of any interest specifically forbidden by the provisions of the General Municipal Law *Matter of Tuxedo Conservation & Taxpayers Assn. v. Town Bd.*, 69 AD2d 320). Similarly, it has been held in other jurisdictions that it is improper for a zoning board member to vote on an application by his or her employer (*see, e.g., Aldom v. Borough of Roseland*, 42 NJ Super 495, 127 A2d 190; *see generally, Disqualification for Bias or Interest of Administrative Officer Sitting in Zoning Proceeding*, 10 ALR3d 694 § 4, at 699-702).

Moreover, pursuant to the provisions of General Municipal Law § 806, the Town of Stony Point has promulgated a Code of Ethics more stringent than the specific provisions of the statute. The preamble of the code provides a clear statement of its broad scope and intent to ensure that "the public have confidence in its Town Government, that public office shall

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not be used for personal profit, and that its public officials must be independent and impartial in their actions" and to prevent "a potential or actual conflict of interest between the private interests of an official, and his duties as such an official".

Relevant to the controversy before us is part B of the code, which provides: " No officer or employee of the Town of Stony Point, shall accept other employment, or make any investment, which will impair his independence of judgment or interfere in any manner, with the exercise or discharge of their [*sic*] official duties."

(2)Although the mere fact of employment might not require disqualification in every instance, we conclude that under the circumstances of these proceedings, the failure of the three O & R employees to disqualify themselves was improper. In light of the unusual nature of the applications and the substantial ***288** controversy surrounding the matter, it was crucial that the public be assured that the decision would be made by town officials completely free to exercise their best judgment of the public interest, without any suggestion of self-interest or partiality. Anything less would undermine the people's confidence in the legitimacy of the proceedings and the integrity of the municipal government. As we stated in *Matter of Tuxedo Conservation & Taxpayers Assn.* (69 AD2d 320, 325, supra.): "[T]he test to be applied is not whether there is a conflict, but whether there might be. Thus, in *Mills v. Town Planning & Zoning Comm. of Town of Windsor* (144 Conn 493, 498), the court said: 'It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest'."

The importance of this project to O & R is obvious. Equally so are those subtle but powerful psychological pressures the mere knowledge of that importance must inevitably place upon any employee of the utility who is in a position to either effectuate or frustrate the project and who is concerned for his or her future with the company. Any attempt to disregard these realities would be senseless, for the public is certainly aware of them. Of course, we do not suggest that O & R did in fact attempt to improperly influence the three individuals involved, either by promise of reward or threat of punishment. Human nature being what it is, however, it is inconceivable that such considerations did not loom large in the minds of the three. Under these circumstances, the likelihood that their employment by O & R could have influenced their judgment is simply too great to ignore. Hence, we conclude that the September 30 decision of the ZBA and the October 5 decision of the Town Board were correctly set aside due to an improper conflict of interest. We turn now to the substance of O & R's claim that the subsequent denials of the requisite variances and permit were arbitrary and capricious.

III

(2)As to the proceedings before the ZBA, the proposed construction required both area and use variances. Because a use variance was necessary, O & R was required to prove unnecessary hardship, not merely practical difficulty (*see*, 2 Anderson, New York Zoning Law and Practice § 23.03 [3d ed]). Since we conclude that O & R did not meet that burden and thus cannot in any event obtain the necessary use variance, it is unnecessary to determine whether it would have been entitled to the area variances alone. ***289** *Matter of Otto v. Steinhilber* (282 NY 71) enunciated the traditional standard of reference for determining whether a use variance case has been made out. The oft-repeated elements are a showing that limiting the land to the permitted uses would prevent the landowner from obtaining a reasonable return, that the circumstances creating the hardship are unique to the particular parcel, and that the requested use will not alter the basic character of the area. Although strict application of the second factor, that of uniqueness, is no longer required in all cases (*see, Matter of Douglaston Civic Assn. v. Klein*, 51 NY2d 963; *Matter of Jayne Estates v. Raynor*, 22 NY2d 417), the test remains a stringent one. Strict application of the *Otto* standard to public utilities would likely bar them from ever obtaining use variances, for the land involved is often useable for other purposes, the hardship generally stems from the needs of the utility rather than being unique to the property, and the facilities involved will normally have an impact on the character of the locality (*see*, 1 Anderson, New York Zoning Law and Practice § 11.24, at 564-565 [3d ed]; *Matter of Consolidated Edison Co. v. Hoffman*, 43 NY2d 598, 607). Precluding public utilities from obtaining use variances, however, might prevent them from performing their mandate to provide "safe and adequate " service to the public (*see*, Public Service Law §65 [1]. Accordingly, a somewhat different standard is applicable when the unnecessary hardship test becomes relevant to a public utility's effort to obtain a use variance.

Although a municipality is not free to prevent a utility from providing necessary services by application of its zoning powers, neither may a utility simply disregard the local ordinances. Rather, a balance must be maintained between those interests of the locality which can be expressed by zoning ordinances and the needs of the community which

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must be served by the utility. Thus, in *Matter of Consolidated Edison Co. v. Hoffman* (43 NY2d 598, 611, supra.), the Court of Appeals declared that to establish unnecessary hardship justifying a use variance for the modification of an existing power plant, a public utility must prove ”that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible to modify the plant than to use alternative sources of power such as may be provided by other facilities.“ Applying the *Consolidated Edison* standard to the controversy before us, in order to establish its right to a use variance O & R was required to show both that coal conversion was necessary to provide safe and adequate service and that the particular modifications with respect to ***290** which the variance was sought were a necessary part of that conversion. Assuming this burden could be met, it would then be necessary to show the existence of ” compelling reasons“ why whatever threat to O & R's ability to provide safe and adequate service would result from a denial of the use variance could not be avoided by some other action. As it is, however, O & R never met its initial burden and thus was not entitled to a variance.

Before the ZBA, O & R took the position that while the standard set forth in *Consolidated Edison* (supra.) was the normal test for a public utility seeking a use variance, the instant application was unique because the Lovett conversion project was included in the State Energy Master Plan and because O & R had obtained DEC approval of the FEIS and various permits allowing construction and operation of the pollution control devices with respect to which the variance was sought. It was O & R's position that inclusion of the Lovett conversion project in the master plan constituted a mandatory expression of State policy, binding upon both O & R and the municipality, and thus the ZBA was required to issue whatever variances were necessary for the conversion. On the question of whether the structures for which the variances were sought were necessary for the conversion, O & R argued that it could not make the conversion without DEC approval, and DEC approval had been obtained subject to the construction of those pollution control devices. Hence, construction of the devices was necessary for the conversion, and O & R was entitled to the variances. In support of its application, O & R submitted the page of the State Energy Master Plan which listed the Lovett conversion project, the FEIS and related material, and charts provided by O & R indicating that conversion to coal would result in considerable savings to O & R's ratepayers. No attempt was made to show that conversion was actually necessary for O & R to continue to provide safe and adequate service or that O & R would be unable to provide safe and adequate service if compelled to forego modification of the facility and continue to burn oil. Instead, O & R elected to prove only (1) that the conversion was included in the State Energy Master Plan, and (2) that the conversion would result in considerable savings. As to the possible negative environmental effects of the conversion, it was O & R's position that the ZBA was precluded from even considering such matters by virtue of the decisions by the DEC.

Promulgation of a State Energy Master Plan was authorized by Energy Law former § 5-110 and Energy Law § 3-101 (former 7) (L 1978, ch 707, §§ 2, 3). These provisions required the Energy Office to prepare a draft State Energy Master Plan to ”provide ***291** the framework for energy related decisions made throughout the state“ (L 1978, ch 707, §§ 2, 3). Upon approval by the State Energy Planning Board, which was created by Energy Law § 1-103 (former 1-a) (L 1978, ch 707, § 1), the draft plan became the State Energy Master Plan (SEMP) (L 1978, ch 707, § 3). The SEMP was not a static document, however, since former section 5-110 also required that it be comprehensively reviewed and updated every two years (L 1978, ch 707, § 3).

Pursuant to this legislation, in 1980 the first State Energy Master Plan was approved by the Energy Planning Board (SEMP I), a revised State Energy Master Plan was approved in 1982 (SEMP II), and the State Energy Office proposed another revision in 1983. No SEMP III was ever approved, however, because the legislation creating the Energy Planning Board and authorizing the promulgation of a State Energy Master Plan expired by its own terms on January 1, 1984 (L 1978, ch 707, § 8). To date, the Legislature has not seen fit to enact legislation continuing or replacing this experiment in long-term planning.

Whatever the significance of the SEMP when O & R's application was before the ZBA, no SEMP now exists, and in the absence of special factors not here present, this court must apply the law as it presently exists (*see, Matter of Alscot Investing Corp. v. Board of Trustees*, 64 NY2d 921, *affg* 99 AD2d 754; *Matter of Mascony Transp. & Ferry Serv. v. Richmond*, 49 NY2d 969, *affg* 71 AD2d 896; *Matter of Demisay, Inc. v. Petito*, 31 NY2d 896). O & R has obtained no vested interest in the Lovett conversion project, for construction has not begun, nor has there been any showing of bad faith on the part of State or local authorities (*cf. Matter of Faymor Dev. Co. v. Board of Stds. & Appeals*, 45 NY2d 560;

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Matter of *Pokoik v. Silsdorf*, 40 NY2d 769; *Matter of* *Temkin v. Karagheuzoff*, 34 NY2d 324). Moreover, neither the SEMP nor the enabling legislation may be said to have conferred any substantive rights upon O & R which might have survived expiration of the statute and the plan (*cf.* General Construction Law §§93, 94; *see generally*, McKinney's Cons Laws of NY, Book 1, Statutes §§ 411, 412). Therefore, the expiration of these provisions vitiates the continuing viability of the SEMP as an expression of current State policy. Whatever lingering effects the plan might have in other contexts, this outdated product of defunct legislation cannot now supersede zoning powers specifically granted a municipality by the Town Law, if indeed it ever could have done so. To require the ZBA to presently issue a variance because at one time there might have been a State mandate for the proposed conversion would be highly inappropriate now that the supposed directive has expired. ***292** This is especially so because the document purportedly expressing that mandate was itself subject to extensive modification every two years. Indeed, the folly of such an approach is indicated by the changing attitudes toward coal conversion seen within the various revisions of SEMP. Thus, although still endorsing the coal conversion project, the proposed draft of SEMP III (never adopted) recognized that the prospect for coal conversion had diminished since the publication of SEMP II: "Increased coal use for future electricity production has been significantly slowed by recent events. Electric utilities within New York State are reexamining plans for constructing and operating 2300 Mw of new coal fired electricity generation at sites which have been licensed by the New York State Board on Electric Generation Siting and the Environment" (Draft Report on New York State Energy Master Plan, at 127 [Aug. 1983]).

Moreover, O & R's reliance upon the State Energy Master Plan as a substitute for proving that conversion was necessary to provide safe and adequate service was misplaced even prior to the expiration of the SEMP. O & R viewed the SEMP as a controlling State directive which overrode the local zoning authority and mandated conversion of the Lovett units. We conclude, however, that the State Energy Master Plan was never intended to be given such conclusive effect.

Pertinent to this discussion are two related but independent principles which occasionally serve to limit or preclude municipal exercise of the zoning power. First, a locality may not use its zoning power to regulate when the Legislature has preempted that entire area of regulation *Consolidated Edison Co. v. Town of Red Hook*, 60 NY2d 99, 104-107; *see, People v. New York Trap Rock Corp.*, 57 NY2d 371, 378; *People v. Cook*, 34 NY2d 100, 109). Although such an intention to preempt may be either express or implied (*see, Consolidated Edison Co. v. Town of Red Hook*, supra., at p 105; *People v. De Jesus*, 54 NY2d 465, 469), it is not enough that the State enact legislation dealing with a certain issue. There must rather be a clear expression of intent "to exclude the possibility of varying local legislation" (*Monroe-Livingston Sanitary Landfill v. Town of Caledonia*, 51 NY2d 679, 683, citing *People v. Cook*, supra., at p 109).

In the instant appeals, O & R correctly concedes that the State has not preempted the area. There exists no clear expression of any State policy to preempt the already limited control localities have traditionally exercised over public utility plant modifications. The instant dispute presents a sharp contrast to those involving the power plant siting decision-making process, for ***293** the latter has been preempted by legislation specifically derogating municipal authority to interfere with the construction of a power plant approved by the State Board on Electric Generation Siting and the Environment (*see*, Public Service Law art VIII; *Consolidated Edison Co. v. Town of Red Hook*, supra., at pp 105-107). No similar regulatory scheme has been enacted with respect to coal conversion projects.

Application of a town zoning ordinance will also be limited if the ordinance is inconsistent with any general State law (*Consolidated Edison Co. v. Town of Red Hook*, supra., at p 107; *see, People v. De Jesus*, 54 NY2d 465, 468, supra.; *McMillen v. Browne*, 14 NY2d 326, 331), unless such divergence is authorized by a local law adopted pursuant to Municipal Home Rule Law § 10 (1) (ii) (d) (3). Thus, a municipality may not normally prohibit that which is permissible under State law (*see, Consolidated Edison Co. v. Town of Red Hook*, supra., at p 108; *Wholesale Laundry Bd. of Trade v. City of New York*, 12 NY2d 998, *affg* 18 AD2d 968, *on opn at* 17 AD2d 327). It is O & R's position that application of the Stony Point zoning ordinance to effectively prohibit the conversion project would be inconsistent with the Energy Law.

Energy Law § 3-105 (2) provides as follows: "[within] one year of the effective date of this chapter, all municipalities shall review their charters, administrative rules and regulations, and practices and procedures to determine whether such are consistent with the energy policy of the state and shall effect or recommend such changes as may be

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necessary to comply with the intent, purposes, programs and procedures set forth in or established pursuant to this chapter."

O & R contends that the SEMP expresses the energy policy of New York State, that the SEMP mandates conversion of the Lovett units, and that application of the zoning power to prohibit the conversion would thus be inconsistent with Energy Law § 3-105 (2). Whatever the validity of this line of analysis in the abstract, it has at least one factual flaw -- the SEMP did not purport to " mandate" or "direct" the Lovett conversion project; rather, it simply found it to be in accord with the State's general energy aims. In *Matter of City of New York v. Larocca* (97 AD2d 666), the Third Department, faced with a challenge to the adoption of SEMP II by the Energy Planning Board, stated that "[the] Planning Board's statutory function is limited to adoption of an integrated document which addresses generic energy factors and recommends a comprehensive strategy to meet New York State's future energy needs *** [In] its limited role as a policy maker it lacks authority to approve or disapprove specific ***294** sites." Hence, the court concluded (pp 666-667) that the inclusion of proposed new plants within the SEMP "was merely a recognition that those sites had already been sanctioned" by the appropriate agencies.

Although *Larocca* (supra.) involved plant siting rather than plant modification, there is nothing within the plan itself or the legislation authorizing it to indicate that the Energy Planning Board was to have played a greater role in the realm of plant modification. Indeed, the drafter of SEMP II specifically recognized, albeit with displeasure, "the ability of municipal governments to use their local permitting powers to delay, impose unreasonable conditions on, or disapprove a coal conversion" and recommended the establishment of "a five member Coal Conversion Board within the Department of Environmental Conservation which would be authorized to override local ordinances found to be unreasonably restrictive" (1 New York State Energy Master Plan, at 38-39 [Mar. 1982]). Similarly, in adopting SEMP II, the Energy Planning Board recognized that municipalities do have the power to block power plant conversions in certain instances and strongly endorsed the proposed legislation (1 New York State Energy Master Plan, at 71). The proposal for a statute authorizing the overriding of the local ordinances was never enacted into law. For these reasons, we conclude that O & R was not entitled to the variance simply because the Lovett conversion project was included in the State Energy Master Plan, but rather was required to prove unnecessary hardship in accord with the standard set forth in *Matter of Consolidated Edison Co. v. Hoffman* (43 NY2d 598, supra.).

Our examination of the record persuades us that O & R did not meet its burden of proving that the modification was necessary for it to continue rendering safe and adequate service. This is a heavy burden and is not to be met simply by evidence, such as that submitted by O & R, that the proposed modification would allow the utility to render more economical service (1 Anderson, New York Zoning Law and Practice § 11.24, at 565 [3d ed]; *see, Matter of Long Is. Light. Co. v. Incorporated Vil. of East Rockaway*, 279 App Div 926, *affd* 304 NY 932). The special treatment afforded power companies seeking variances is premised upon the unarguable truth that an adequate supply of electrical power is an absolute necessity in our society. Thus, if construction or modification of a power plant is necessary to ensure that supply of energy, the needs of the general public must prevail over the otherwise legitimate local concerns expressed in land use regulations. ***295**

Absent a statutory exemption from zoning regulations, however, this principle is limited to those situations in which strict adherence to zoning requirements might impair the utility's ability to safely provide an adequate supply of power (*see*, 6 Rohan, Zoning and Land Use Controls § 40.03 [1], at 40-73 -- 40-75; 2 Anderson, American Law of Zoning § 12.31 [2d ed]). The courts of this State have not gone so far as to hold, as O & R would have us do, that a utility may disregard the zoning power of a municipality and obtain a use variance whenever the changes proposed by the utility would result in increased economy and efficiency and despite the absence of any viable claim that the modifications are necessary to provide an adequate supply of power. Although coal conversion might well result in significant savings for O & R's ratepayers, if indeed O & R's projections as to the relative costs of oil and coal in the future are at all accurate, the law as it presently exists requires that something more than an economic gain be shown in order to justifiably supersede a municipality's exercise of its legitimate zoning authority and require issuance of a use variance. For example, in *Matter of Consolidated Edison Co. v. Hoffman* (43 NY2d 598, 608-609, supra.) the utility showed that denial of the use variance it sought would have required it to cease operating the plant in question, thus adversely affecting its ability to provide power to its ratepayers. In the instant proceedings, O & R has never claimed that it cannot continue to utilize its present facilities at Lovett without modification, or that its oil burning generating units are inadequate to provide safe and adequate

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service. Having failed to show that conversion was necessary to provide safe and adequate service, O & R did not meet its burden of proving that strict compliance with the zoning ordinance would impose an unnecessary hardship upon it (*see, Matter of Consolidated Edison Co. v. Hoffman*, supra., at p 611). Therefore, the denial of the variance application cannot be deemed arbitrary and capricious.

We emphasize that this is not a case in which a locality improperly refused to consider the energy needs of the larger area around it in considering a variance application. Rather, the ZBA had no occasion to do so because O & R, acting on the erroneous belief that it was not required to prove that conversion was necessary, made no attempt to provide such proof. The dilemma in which O & R finds itself, thwarted at the last moment by strict application of a municipal zoning ordinance after successfully maneuvering through the complex State permit process, illustrates the defects in a system which allows such overlapping and potentially contradictory sources of regulation. ***296** If the system is to be altered, the task, of course, is for the Legislature. Until that body acts, however, absent proof of necessity, municipalities retain an enormous capacity to prevent power plant modifications that conflict with local zoning regulations. There is no basis, therefore, for the grant of the use variance sought by O & R.

IV

Turning finally to the Town Board's administrative action relative to the development permit, our analysis must proceed on other grounds. As is discussed above, upon remittitur by Special Term due to the conflict of interest of the Town Board member who was also an O & R employee, O & R's application for the permit was denied by a 2-to-2 vote.

The Zoning Ordinance of the Town of Stony Point § 39-15.1 precludes issuance of a building permit for construction on any plot which is an acre or more in size unless the applicant first obtains a large scale development permit from the Town Board. Such a permit is to be issued if the Town Board approves the applicant's site plan. In reviewing the site plan, section 39-15.1 requires the Board to consider several enumerated factors, such as traffic, drainage, lighting, parking and screening or fencing. Of particular relevance to this dispute is section 39-15.1 (B) (3), which requires the Town Board to "give due consideration to": "(3) The availability of or provisions made for the treatment, removal or discharge of sewage or other effluent, whether liquid, solid, gaseous or otherwise, and the removal of garbage and other refuse created or generated by or as a result of the proposed use of the premises."

Because the resolution to approve O & R's application was rejected by a tie vote rather than by a majority of the Board and thus no resolution rejecting the proposal could be enacted, there exists and can exist no formal statement of reasons for the rejection. Under the circumstances, examination of the transcript of the Town Board meeting at which the vote was taken and the affidavits submitted in these proceedings by the two members who voted against the application provides a sufficient basis for determining whether the denial was arbitrary and capricious, especially since it was a legislative body that was involved (*see, Matter of Lemir Realty Corp. v. Larkin*, 8 AD2d 970, *on remand* 195 NYS2d 232, *revd* 10 AD2d 1005, *affd* 11 NY2d 20).

(4)So viewed, the record indicates that the two negative votes were based on a variety of considerations, the most significant of which we deem to be the tentative nature of O & R's plan for ***297** disposal of the ash waste which would be produced by the plant following conversion. We conclude that this was a valid matter of concern for the Board and provides adequate support for denial of the permit.

O & R argues that the defeated resolution, if adopted, would have conditioned approval of the application upon subsequent approval of an appropriate disposal plan, and it has informed this court that it has since obtained DEC approval to utilize an adjacent quarry as a disposal site. Contending that the DEC decision bars the Town Board from considering any potential environmental impact, O & R postulates that the issue of ash waste disposal is now moot.

That the proposed resolution was conditioned on later approval of a disposal site does not render its defeat arbitrary and capricious, for it was certainly not unreasonable for the Board members to decide to deny the application while this question remained open rather than to approve it on condition that an acceptable disposal plan be developed at a later date. Nor does the DEC decision automatically authorize O & R to construct and operate the waste disposal facility, for that decision does not preclude the town from subsequently imposing higher or additional standards or regulations for waste disposal than those promulgated by the DEC, should it elect to do so. ECL 27-0711 specifically recognizes the continuing authority of a municipality to regulate waste disposal facilities, as long as such regulation is not inconsistent with the ECL or the regulations of the DEC.

Moreover, the statute unambiguously declares that "[any] local laws, ordinances or regulations *** which comply with at least the minimum applicable requirements set forth in any rule or regulation promulgated pursuant to this title shall be deemed consistent with this title or with any such rule or regulation".

Thus, a municipality may impose additional requirements upon solid waste disposal facilities and it is not required to allow construction of such a facility simply because it has been approved by the DEC (*Monroe-Livingston Sanitary Landfill v. Town of Caledonia*, 51 NY2d 679, 683, supra.; *see, Matter of Town of Poughkeepsie v. Flacke*, 84 AD2d 1). DEC approval means that O & R's proposal satisfied the standards and regulations promulgated by the DEC, and to that extent it was binding upon the Town of Stony Point (*see, SCA Chem. Waste Servs. v. Board of Appeals*, 52 NY2d 963, *affg* 75 AD2d 106). The town remains free, however, to impose additional standards and requirements or to prohibit the facility altogether, as long as its action is otherwise valid. Neither *Matter of Consolidated Edison* ***298** *Co. v. Hoffman* (43 NY2d 598, supra.) nor *SCA Chem. Waste Servs. v. Board of Appeals* (52 NY2d 963, *affg* 75 AD2d 106, supra.) is to the contrary. In *Matter of Consolidated Edison Co. v. Hoffman* (supra.), the court held that the municipality could not reconsider environmental issues which had previously been decided by the Atomic Energy Commission, not the DEC, whereas the decision in *SCA Chem. Waste Servs. v. Board of Appeals* (supra.) was based upon an apparent *inconsistency* between a DEC decision concerning the effects of possible pipeline leakage and a contrary factual finding by a municipality. Here there is no such inconsistency. Thus, the unsettled question of ash waste disposal alone justified denial of the permit.

Nor was the decision of the Town Board to deny the permit invalid because of the failure to refer the matter to the Rockland County Planning Board. Although denominated a "permit", what was in essence involved here was a site plan approval process, as O & R itself contends. Prior to September 1, 1983, General Municipal Law § 239-m required reference to the County Planning Board only with respect to variances, special permits or the adoption or amendment of zoning ordinances. In 1983, the Legislature amended the statute to include the site plan approval process (L 1983, ch 324, § 1). Although it could be argued that site plan approval was previously included in the term "special permit ", special permits, sometimes called special exceptions, traditionally refer to specific uses that can only be granted by town boards or boards of appeal. Site approvals and special permits have always been different land use devices (*see*, 1977 Atty Gen [Inf Opns] 200-201; 2 Rathkopf, Zoning and Planning § 30.04[1] [4th ed]; 3 Rathkopf, Zoning and Planning ch 41 [4th ed]). Furthermore, to hold they are the same would be to render the change in the law meaningless, and that we may not do (*see, Mabie v. Fuller*, 255 NY 194). Since the instant proceedings took place prior to the effective date of the amendment, referral was not required, although it would now be necessary were we to nullify the determination of the Town Board and remit for further proceedings.

In sum, Special Term properly set aside on conflict of interest grounds the initial determinations granting the variances and the permit. The subsequent denial of the variance application was properly upheld, since O & R failed to prove its entitlement to a use variance, while the denial of the permit cannot be set aside because it was premised on valid considerations and was not arbitrary and capricious. The actions of the ZBA and the Town Board did not conflict with any general State law, nor did they trespass upon the realm of regulatory activities preempted ***299** by the State. Hence, denial of the variance and permit applications must be sustained.

Accordingly, the judgments appealed from should be affirmed, with one bill of costs.

Bracken, Weinstein and Niehoff, JJ., concur.
Two judgments of the Supreme Court, Rockland County, both dated June 14, 1983, as amended June 23, 1983, and two judgments of the same court, both dated March 5, 1984, affirmed, with one bill of costs. ***300**

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of the Civil Practice Law and Rules in Supreme Court. Thus, the duties of these two positions are independent of one another.

We conclude that the positions of town justice and member of the town planning board are compatible.

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

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Written by: James D. Cole, Assistant Attorney General in Charge of Opinions

Issued on: May 17, 1990

Opn. No. I 90-38

GENERAL MUNICIPAL LAW, §§806(1), 808.

The chairman of the town planning board must recuse himself from acting with respect to applications by a developer who does business with the corporation of which the chairman is president.

You have asked whether the chairman of your town's planning board has a conflict of interests requiring that he recuse himself from participating with regard to certain matters that come before the board.

You have informed us that the chairman of the planning board is also the president of a business which fabricates steel and provides steel products. The gross sales of this company are approximately $2,000,000 per year. A developer in the community who presents many projects to the town planning board for approval is the owner of a local building and construction company which purchases steel products from the corporation of which the chairman of the planning board is president. Further, you have informed us that the sales by this corporation to the developer's corporation are valued at approximately $2,500 per year. In that the developer in question is active in land development in the town, you question whether and

to what extent the chairman of the planning board must refrain from participating in projects that concern this developer.

The development of ethics standards to define when employment or actions 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]). Municipalities are required to adopt a code of ethics, which must include these and other standards (*ibid.*). A code may provide for the prohibition of conduct in violation of ethics standards (*ibid.*). Also, 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 the code of ethics (*id.*, §808). Therefore, it is necessary that you review your local code of ethics to determine whether any provisions apply to the question at hand.

It is not necessary, however, that a specific provision of the General Municipal Law be violated in order to find a conflict of interests (*Matter of Zagoreos v Conklin*, 109 AD2d 281, 287 [2d Dept, 1985]; *Matter of Conrad v Hinman*, 122 Misc 2d 531, 534 [Sup Ct, Onondaga Co, 1984]). The decisions of local boards have been set aside based upon a judicial finding of conflicts of interests of board members participating in the decisions (*ibid.; Taxpayers' Association v Town Board*, 69 AD2d 32 [2d Dept, 1979]).

In opinions of the Attorney General, we have emphasized that public officials should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest (1984 Op Atty Gen [Inf] 86, 160). Even the appearance of impropriety should be avoided in order to maintain public confidence in government (*ibid.*).

In our view, it is clear that the chairman of the planning board should recuse himself from participating in any deliberations or votes concerning applications by this developer which include or may include materials purchased from the corporation of which the chairman is president. Under these circumstances, the chairman would have a direct financial interest in the application, resulting in a conflict of interests. Further, we believe that the on-going business relationship which the chairman of the planning board has with the developer requires that the chairman recuse himself from all deliberations and votes regarding any application by this developer. This relationship creates at least an appearance of impropriety were the chairman to continue acting with respect to applications by the developer.

There is also the question whether the chairman's business dealings in the town would prevent him from acting on applications involving developers planning to incorporate steel products in their projects but not utilizing the services of the corporation of which the chairman is president. The reviewing of applications by developers who do not utilize the services of his firm could create at least an appearance of impropriety. The conflict in these circumstances will depend upon the extent of the chairman's business in the town. These facts will also determine whether recusal is an effective remedy or whether this individual is ineligible to serve on the planning board. You have not presented enough facts regarding the chairman's business dealings in the town for us to make this determination. In any event, it would seem more appropriate that this judgment be made by local officials familiar with conditions in the locality.

We conclude that the chairman of the town planning board must recuse himself from acting with respect to applications by a developer who does business with the corporation of which the chairman is president.

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

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in Charge of Opinions

Issued on: May 17, 1990

Opn. No. I 90-39

MUNICIPAL HOME RULE LAW, §§10(1)(ii)(a)(14) and (e)(3), 22; STATUTE OF LOCAL GOVERNMENTS, §10(6); TOWN LAW, §§22, 276(4) and (5).

A town board may enact a local law amending section 276 of the Town Law to extend the time during which a conditionally approved final plat may be submitted for signature.