

# **Ethics**

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**NEW YORK STATE GENERAL MUNICIPAL LAW**  
**ARTICLE 18 (CONFLICTS OF INTEREST)**

(Current through Dec. 17, 2014, including 2014 N.Y. Laws 490 amendments repealing references to the Temporary State Commission in sections 806, 808, and 810-813)

**§ 800. Definitions**

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

1. "Chief fiscal officer" means a comptroller, commissioner of finance, director of finance or other officer possessing similar powers and duties, except that in a school district the term shall not mean a member of the board of education or a trustee thereof.
2. "Contract" means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law.
3. "Interest" means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of (a) his spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves, (b) a firm, partnership or association of which such officer or employee is a member or employee, (c) a corporation of which such officer or employee is an officer, director or employee and (d) a corporation any stock of which is owned or controlled directly or indirectly by such officer or employee.
4. "Municipality" means a county, city, town, village, school district, consolidated health district, county vocational education and extension board, public library, board of cooperative educational services, urban renewal agency, a joint water works system established pursuant to chapter six hundred fifty-four of the laws of nineteen hundred twenty-seven, or a town or county improvement district, district corporation, or other district or a joint service established for the purpose of carrying on, performing or financing one or more improvements or services intended to benefit the health, welfare, safety or convenience of the inhabitants of such governmental units or to benefit the real property within such units, an industrial development agency but shall have no application to a city having a population of one million or more or to a county, school district, or other public agency or facility therein.
5. "Municipal officer or employee" means an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.
6. "Treasurer" means a county treasurer, city treasurer, town supervisor, village treasurer, school district treasurer, fire district treasurer, improvement district treasurer, president of a board of health of a consolidated health district, county vocational educational and extension board

treasurer, treasurer of a board of cooperative educational services, public general hospital treasurer, or other officer possessing similar powers and duties.

### **§ 801. Conflicts of interest prohibited**

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

### **§ 802. Exceptions**

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

1. a. The designation of a bank or trust company as a depository, paying agent, registration agent or for investment of funds of a municipality except when the chief fiscal officer, treasurer, or his deputy or employee, has an interest in such bank or trust company; provided, however, that where designation of a bank or trust company outside the municipality would be required because of the foregoing restriction, a bank or trust company within the municipality may nevertheless be so designated;
- b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;
- c. The designation of a newspaper, including but not limited to an official newspaper, for the publication of any notice, resolution, ordinance or other proceeding where such publication is required or authorized by law;
- d. The purchase by a municipality of real property or an interest therein, provided the purchase and the consideration therefor is approved by order of the supreme court upon petition of the governing board;
- e. The acquisition of real property or an interest therein, through condemnation proceedings according to law;
- f. A contract with a membership corporation or other voluntary non-profit corporation or association 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;
- 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<sup>1</sup> 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.

### **§ 803. Disclosure of interest**

- 1. Any municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body

thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

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

#### **§ 804. Contracts void**

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

#### **§ 804-a. Certain interests prohibited**

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

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

#### **§ 805. Violations**

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

### **§ 805-a. Certain action prohibited**

1. No municipal officer or employee shall:
  - a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;
  - b. disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;
  - c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or
  - d. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
2. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate this section may be fined, suspended or removed from office or employment in the manner provided by law.

### **§ 805-b. Solemnization of marriages**

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

### **§ 806. Code of ethics**

1. (a) The governing body of each county, city, town, village, school district and fire district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Notwithstanding any other provision of this article to the contrary, a fire district code of ethics shall also apply to the volunteer members of the 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.

#### **§ 807. Posting of statute**

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.

#### **§ 808. Boards of ethics**

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 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.

### **§ 809. Disclosure in certain applications**

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.<sup>1</sup>

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.

### **§ 810. Additional definitions**

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:

(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.

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

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-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.

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

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

(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 conjunction<sup>1</sup> 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.

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  
(Insert Name of Political Subdivision) - (For calendar year \_\_\_\_\_)

1. Name
  
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.

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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.

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

4. (a) 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.

<u>Position</u>	<u>Organization</u>	<u>State or Local Agency</u>
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- 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.

<u>Position</u>	<u>Organization</u>	<u>State or Local Agency</u>
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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.

<u>Position</u>	<u>Name &amp; Address of Organization</u>	<u>Description</u>	<u>State or Local Agency</u>
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- (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.

<u>Position</u>	<u>Name &amp; Address of Organization</u>	<u>Description</u>	<u>State or Local Agency</u>
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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.

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

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

<u>Self, Spouse or Child</u>	<u>Name of Donor</u>	<u>Address</u>	<u>Nature of Gift</u>	<u>Category of Value of Gift</u>
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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

- 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.
- 11.

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.)

- 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.

<u>Self/ Spouse</u>	<u>Source</u>	<u>Nature</u>	<u>Category of Amount</u>
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- 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.
14. 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.

<u>Source</u>	<u>Category of Amount</u>
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- 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.

<u>Item Assigned or Transferred</u>	<u>Assigned or Transferred to</u>	<u>Category of Value</u>
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- 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.
16. 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.

<u>Self/ Spouse</u>	<u>Issuing Entity</u>	<u>Type of Security</u>	<u>Category of Market Value as of the close of the taxable year last occurring prior to the filing of this statement</u>	<u>Percentage of corporate stock owned or controlled</u>
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- 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.
- 17.

<u>Self/</u>	<u>Location</u>	<u>Size</u>	<u>General</u>	<u>Acquisition</u>	<u>Category of</u>	<u>Percentage of</u>
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<u>Spouse/ Other Party</u>	<u>Nature</u>	<u>Date</u>	<u>Market Value</u>	<u>Owner ship</u>
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- 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.
- 18.

<u>Name of Debtor</u>	<u>Type of Obligation, Date Due, and Nature of Collateral, if any</u>	<u>Category of Amount</u>
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- 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.
- 19.

<u>Name of Creditor or Guarantor</u>	<u>Type of Liability and Collateral, if any</u>	<u>Category of Amount</u>
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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.



# Non-Article 18 Conflicts of Interest Restrictions Governing Counties, Cities, Towns, and Villages Under New York State Law

By Mark Davies

## Introduction

As most municipal attorneys know, the primary state law governing conflicts of interest in municipalities in New York State is set forth in Article 18 of the General Municipal Law. That law applies to all officers and employees, whether paid or unpaid, of every municipality in the state, except New York City.<sup>1</sup> Thus, Article 18 applies not only to political subdivisions—counties, cities, towns, and villages—but also to, for example, school districts, fire districts, county improvement districts, BOCES, urban renewal agencies, and public libraries.



Article 18 has been the subject of many Municipal Law Section seminars and articles, a number of which are reproduced on the Section's website.<sup>2</sup> Characterized by the Temporary State Commission as "disgracefully inadequate," Article 18 provides little guidance to municipal officials; it contains huge gaps; and in the one area that it does regulate (prohibited interests in contracts), it over-regulates to such an extent that it can turn well-meaning public servants into convicted criminals. For these reasons, the Section's Ethics Committee has often advised that municipalities should adopt their own comprehensive, comprehensible, and sensible local ethics law. Materials on that topic may also be found on the Section's website.

One of the Legislature's primary purposes in adopting Article 18, over 40 years ago, was to replace a multitude of conflicts provisions scattered throughout the consolidated laws with a "generic law in relation to conflicts of interest in municipal transactions. . . ."<sup>3</sup> For all of its defects, Article 18 accomplished that purpose, significantly reducing the proliferation of conflicts of interest provisions. Nonetheless, scattered throughout the consolidated laws, some conflicts of interest legislation still exists, some of it rather hidden, waiting to leap out and bite the unwary municipal lawyer.

Accordingly, this article takes a first stab at compiling, in some comprehensive fashion, a compendium of conflicts of interest provisions regulating municipal officers and employees, as set forth in the chart (see pp.7-11). One must, however, emphasize two caveats. First, this chart is intended to be dynamic. The Section will post it on the Section's website and will add new entries and correct existing entries as they are received. Attorneys are thus encouraged to e-mail to the author any such additions or corrections (davies@coib.nyc.gov). Second, the chart includes only provisions for counties, cities, towns, and villages; but the Committee wishes to expand it to other political subdivisions as well, including, in particular, school districts and public authorities. Attorneys are thus particularly encouraged to e-mail provisions regulating those political subdivisions.

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*"Characterized by the Temporary State Commission as 'disgracefully inadequate,' Article 18 provides little guidance to municipal officials; it contains huge gaps; and in the one area that it does regulate, . . . it over-regulates to such an extent that it can turn well-meaning public servants into convicted criminals."*

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## Review of the Provisions

Of the 72 provisions cited in the chart, almost half of them (34) regulate the holding of dual public offices or employment or the compatibility of public offices. Article 18 does not expressly address this issue, which is, instead, governed largely by common law. The New York State Attorney General's Office has issued dozens of opinions over the years about compatibility of office. The author of many of those opinions has written an article on the topic, which is posted on the Section's website.<sup>4</sup>

But the compatibility of some public offices is expressly governed by provisions in the consolidated laws, in particular restrictions on holding both an elective and appointive office in the same municipality. For example, a member of a county board of supervisors may not serve as a county administrator (only the chair may do so) or county manager;<sup>5</sup> and an elected or appointed county executive may not hold another elective office, with certain exceptions.<sup>6</sup> Similarly, a common council member may not hold any office paid for with city funds.<sup>7</sup> Nor may a member of a town board serve on the town's zoning or planning board;<sup>8</sup> the same rule applies to a member of a village board of trustees.<sup>9</sup>

Sometimes the restriction on the dual offices proceeds from the inherently incompatible nature of the positions. For example, not surprisingly, an assessor, or a member of the assessor's staff, may not serve on the board of assessment review;<sup>10</sup> and a town justice may not be employed as a police officer or peace officer (and not just in the same town).<sup>11</sup>

Some statutory provisions expressly permit dual office holding. For example, members of county, town, and village planning boards may serve on one another's planning boards.<sup>12</sup> So, too, a member of a municipal urban renewal agency may be an official or employee of the municipality.<sup>13</sup>

None of the foregoing provisions duplicates the provisions of Article 18. Indeed, none of the conflicts of interest restrictions set forth in the chart duplicates Article 18 restrictions. Thus, unlike Article 18, some non-Article 18 provisions address the use of one's municipal office for political purposes.<sup>14</sup> A handful of restrictions on moonlighting also exist, for example, on outside employment by members of a police force or by city engineers in certain cities and on the practice of law by certain law enforcement officers, such as constables and sheriffs.<sup>15</sup> And most readers are

familiar with the constitutional prohibition on using government resources for a non-government purpose.<sup>16</sup> Of course, the Penal Law contains official misconduct and bribery provisions.<sup>17</sup>

A handful of provisions set forth in the chart require recusal by a municipal official in certain circumstances, for example, by a member of a county planning board or a regional planning council when a matter comes before it that is or was before another municipal board of which he or she is a member.<sup>18</sup> Since an action by a municipal body, as a general rule, requires the affirmative vote of a majority of the total membership of the body,<sup>19</sup> a recusal, whether mandated by statute or common law, effectively acts as a negative vote, and may even paralyze the board. To address that problem, county, city, town, and village legislative bodies may, by law, appoint alternate members to their planning boards and, in the case of cities, town, and villages, to their zoning boards as well.<sup>20</sup>

This author located only two provisions regulating disclosure, one relating to transactional disclosure by members of boards of assessment review and the other to financial disclosure by assessors.<sup>21</sup> As an aside, one should note two recent session laws mandating disclosure. Chapter 499 of the Laws of 2005, which became effective on August 16, amended General Municipal Law § 803 in regard to transactional disclosure. Also, Chapter 766, effective January 13, 2006, imposes a financial disclosure requirement on board members, officers, and employees of municipal-related public authorities, public benefit corporations, not-for-profit corporations, industrial development authorities and agencies, and their affiliates. Finally, the chart lists some miscellaneous provisions on penalties, enforcement (including taxpayer suits), and removal from office.<sup>22</sup>

Political Subdivisions <sup>23</sup> Affected	Subject	Restrictions/Prohibitions on (or Provisions Governing)	Citation
All	Use of gov't resources	Gift or loan of municipal funds or property for non-government purposes	Const., Art. 8, § 1
All	Removal from office	(Removal of officers for misconduct or malversation in office)	Const., Art. 13, § 5
Counties	Dual offices	Member of board of supervisors (except chair) serving as county administrator (but county administrator may serve, without additional compensation, as head of department not administered by elective official)	Alt. County Gov't Law § 50
Counties	Dual offices	Member of board of supervisors serving as county manager (but county manager may serve, without additional compensation, as head of department not administered by elective official)	Alt. County Gov't Law § 51
Counties	Dual offices	(County director or president may serve, without additional compensation, as head of department not administered by elective official)	Alt. County Gov't Law §§ 52, 53
Counties	Dual offices	Elected or appointed county executive holding other elective office (except as provided in § 50)	Alt. County Gov't Law § 152
Counties	Removal from office	(Removal of county president pursuant to Pub. Off. Law §§ 33-35; removal of county manager or other appointive county executive by board of supervisors)	Alt. County Gov't Law § 154
Counties	Dual offices	(Department head may serve as deputy county executive without additional compensation)	Alt. County Gov't Law § 156(5)
All	Political activities; promise of influence	Personnel actions based on political affiliation, activities, or contributions; compelling or inducement of political contributions; solicitation or receipt of political contributions in government offices; promise of influence	Civ. Serv. Law § 107
Counties	Dual offices	District attorney, sheriff, county clerk, or any elective county officer holding any other elective county or town office or city supervisor office	County Law § 411
Counties	Recusal	(In lawsuit where sheriff is a party, county clerk executes all mandates)	County Law § 661
All	Political activities	Police commissioner or officer or member of police force (1) using power for political purposes or (2) taking personnel action in regard to officer or member of police force for political reasons or (3) soliciting or receiving money for political organizations	Election Law § 17-110
All	Political activities	Promise of (or deprivation of) government employment or benefit funded by work relief funds in return for or on account of political activity; solicitation or receipt of political contributions from anyone receiving work relief funds; disclosure to political committee of names of persons receiving work relief funds	Election Law § 17-154

Political Subdivisions Affected	Subject	Restrictions/Prohibitions on (or Provisions Governing)	Citation
All	Political activities	Compelling or inducing officer or employee to make political assessment	Election Law § 17-156
Cities	Dual offices	Common council member holding any office paid for with city funds	Gen. City Law § 3
Cities	Removal from office	(Officer appointed or nominated by mayor of city of third class may be removed only with approval of mayor)	Gen. City Law § 4
Cities	Dual offices	Volunteer membership in more than one fire company at same time	Gen. City Law § 16-a(10)
Cities	Dual offices	More than minority of members of planning board holding other public office or position in city; member of legislative body of city serving on planning board; appointment of municipal officer or employee to planning board where he or she cannot carry out duties without conflict with duties as planning board member (but otherwise municipal officers or employees may serve on planning board and perform other municipal duties); (county planning board member may serve on city planning board)	Gen. City Law § 27(1), (3), (10), (12)
Cities	Recusal	(Legislative body may establish alternate planning board members to serve when regular member must recuse because of conflict of interest)	Gen. City Law § 27(16)
Cities	Dual offices	Member of legislative body of city serving on zoning board; appointment of municipal officer or employee to zoning board where he or she cannot carry out duties without conflict with duties as zoning board member (but otherwise municipal officers or employees may serve on zoning board and perform other municipal duties)	Gen. City Law § 81(2), (9)
Cities	Recusal	(Legislative body may establish alternate zoning board members to serve when regular member must recuse because of conflict of interest)	Gen. City Law § 81(11)
All	Enforcement	(Property taxpayers may bring action seeking injunction or damages against municipal officers and agents for illegal official acts)	Gen. Mun. Law § 51
Cities	Moonlighting	Outside work for another employer by member of police force	Gen. Mun. Law § 208-d <sup>24</sup>
Counties	Dual offices	(Elected and appointed officials of county or municipality may serve on county planning board)	Gen. Mun. Law § 239-c(2)(c)
Counties	Recusal	County planning board member deliberating or voting on matter before planning board where matter is or was before municipal board of which he or she is a member	Gen. Mun. Law § 239-c(2)(c)
Counties	Recusal	(County legislative body may establish alternate county planning board members to serve when regular member must recuse because of conflict of interest)	Gen. Mun. Law § 239-c(1-a)

Political Subdivisions Affected	Subject	Restrictions/Prohibitions on (or Provisions Governing)	Citation
All	Dual offices	(Elected and appointed officials of a municipality may be appointed by the municipality to a regional planning council)	Gen. Mun. Law § 239-h(3)(c)
All	Recusal	Regional planning council member deliberating or voting on matter before council where matter is or was before municipal board of which he or she is a member	Gen. Mun. Law § 239-h(3)(c)
City, town, village	Dual offices	(Member of municipal urban renewal agency may be official or employee of the municipality)	Gen. Mun. Law § 553(4)
All	Dual offices	(Members of industrial development agency may include representatives of local government; member of the agency may be an official or employee of the municipality)	Gen. Mun. Law § 856(2), (4)
All	Applicable ethics law	(All members, officers, and employees of industrial development agencies are subject to Gen. Mun. Law Art. 18)	Gen. Mun. Law § 883
All	Moonlighting	Constable, coroner, crier, attendant of a court practicing law in any court; sheriff, under sheriff, deputy sheriff, or sheriff's clerk practicing law in county in which he or she is elected or appointed	Jud. Law § 473
All	Political activities	Employer's personnel decisions based on employee's off-hour, off-site political activities not using employer's equipment or other property, unless a conflict of interest exists	Labor Law § 201-d(2)(a), (3)(a), (3)(c), (3)(d)
All	Official misconduct	Official misconduct; obstructing governmental administration; defrauding the government	Penal Law Art. 195
All	Bribery	Bribery and bribe receiving; rewarding and receiving reward for official misconduct; giving and receiving unlawful gratuities; bribe giving and receiving for public office	Penal Law Art. 200
Counties	Applicable ethics law	(County legislative body must establish a code of ethics for members of board of visitors in county-owned residential health care facility)	Pub. Health Law § 2803-g(11)
Counties, cities	Removal from office	(Governor may remove county treasurer, county superintendent of the poor, county register, county coroner, chief executive officer of a city, chief executive officer of city police force)	Pub. Off. Law § 33; <i>see also</i> §§ 34, 35
Towns, villages	Removal from office	(Supreme court may remove town or village officer, except justice of peace)	Pub. Off. Law § 36
All	Financial disclosure	(Assessors must file a short form annual financial disclosure statement)	RPTL § 336
All	Dual offices	Assessor or member of his or her staff serving on board of assessment review; majority of members of board of assessment review being officers or employees of the municipality	RPTL § 523(1)(b)

Political Subdivisions Affected	Subject	Restrictions/Prohibitions on (or Provisions Governing)	Citation
All	Transactional disclosure	(Members of board of assessment review must disclose in writing direct or indirect interest in property for which complaint has been filed)	RPTL § 523(3)
Towns, villages	Dual offices	(In certain counties, town receiver of taxes may be appointed as village receiver of taxes)	RPTL § 1431
Second Class Cities <sup>25</sup>	Additional compensation	Officers (with certain exceptions) receiving compensation or fees in addition to salary	Second Class Cities Law § 17
Second Class Cities	Dual offices	Holding more than one city office	Second Class Cities Law § 19
Second Class Cities	Enforcement; removal from office	(Common council may punish or expel members for official misconduct)	Second Class Cities Law § 34
Second Class Cities	Penalties; enforcement	(Unlawful action by common council member is misdemeanor; common council members may be sued by taxpayer for unlawful actions)	Second Class Cities Law § 44
Second Class Cities	Moonlighting	City engineer having any outside work	Second Class Cities Law § 98
Second Class Cities	Dual offices	Members of police or fire department holding any other office or being employed in any other city department	Second Class Cities Law § 135
Second Class Cities	Political activities; enforcement	(Dismissal of officer or member of police department for violating Election Law § 17-110)	Second Class Cities Law § 144
Second Class Cities	Additional compensation	Officers and employees receiving allowances or compensation in addition to regular salary or compensation	Second Class Cities Law § 240
Towns	Dual offices	Holding more than one elective town office; member of town board serving as comptroller	Town Law § 20(4)
Towns	Dual offices	Town justice employed as police officer or peace officer	Town Law § 31(4)
Towns	Dual offices	Town justice serving as town board member	Town Law § 60(2)
Towns <sup>26</sup>	Dual offices	Fire district commissioner serving as chief or assistant chief of the fire district fire department	Town Law § 174(1)(a)
Towns	Dual offices	Volunteer membership in more than one fire company	Town Law § 176-b(10)
Towns	Dual offices	Town board member serving on zoning board of appeals	Town Law § 267(3)
Towns	Recusal	(Town board may establish alternate zoning board members to serve when regular member must recuse because of conflict of interest)	Town Law § 267(11)
Towns	Dual offices	Town board member serving on planning board	Town Law § 271(3)

Political Subdivisions Affected	Subject	Restrictions/Prohibitions on (or Provisions Governing)	Citation
Towns	Dual offices	(Member of village or county planning board may serve on town planning board)	Town Law § 271(12)
Towns	Recusal	(Town board may establish alternate planning board members to serve when regular member must recuse because of conflict of interest)	Town Law § 271(15)
Villages	Dual offices	Simultaneously holding elective and appointive village office (with certain exceptions)	Village Law § 3-300(3)
Villages	Dual offices	(Except as provided by law, one may hold a village office and another public office, unless one cannot fully discharge the village office while carrying out the duties of the other office)	Village Law § 3-300(4)
Villages	Penalties	(Village officer who unlawfully appropriates village money or property or assets thereto is personally liable)	Village Law § 4-412(12)
Villages	Dual offices	Village trustee serving on zoning board of appeals	Village Law § 7-712(3)
Villages	Recusal	(Village board of trustees may establish alternate zoning board members to serve when regular member must recuse because of conflict of interest)	Village Law § 7-712(11)
Villages	Dual offices	Village trustee serving on planning board	Village Law § 7-718(3)
Villages	Dual offices	(Member of town or county planning board may serve on village planning board)	Village Law § 7-718(12)
Villages	Recusal	(Village board of trustees may establish alternate planning board members to serve when regular member must recuse because of conflict of interest)	Village Law § 7-718(16)
Villages	Use of gov't resources	(Village may appropriate funds for annual firemen's inspection dinner for each fire company in village)	Village Law § 10-1000(11)
Villages	Dual offices	Volunteer membership in more than one fire company	Village Law § 10-1006(10)
Villages	Dual offices	Village mayor or trustee holding office of chief or assistant chief of village fire department, unless trustee does not, either as individual or member of a board, appoint or approve appointment of chief or assistant chief	Village Law § 10-1012
Village	Dual offices	(In village that encompasses a town, holder of town office may also hold a village office)	Village Law § 17-1730

## Endnotes

1. See Gen. Mun. Law § 800(4) (defining "municipality"). The financial disclosure provisions of Article 18 also apply to New York City. See Gen. Mun. Law §§ 810(1), 811(1)(a).
2. The Section's URL is: <http://www.nysba.org/municipal>.
3. 1964 N.Y. Laws ch. 946, § 1.
4. See James D. Cole, *Compatibility of Office, Municipal Lawyer*, Summer 2004, at 19.
5. Alt. County Gov't Law §§ 50, 51.
6. Alt. County Gov't Law § 152.
7. Gen. City Law § 3.
8. Town Law §§ 267(3), 271(3).
9. Village Law §§ 7-712(3), 7-718(3).
10. RPTL § 523(1)(b).
11. Town Law § 31(4).
12. See Gen. Mun. Law § 239-c(2)(c); Town Law § 271(12); Village Law § 7-718(12).
13. Gen. Mun. Law § 553(4).
14. See Civ. Serv. Law § 107; Election Law §§ 17-110, 17-154, 17-156; Labor Law § 201-d(2)(a), (3)(a), (3)(c), (3)(d); Second Class Cities Law § 144.
15. Gen. Mun. Law § 208-d; Second Class Cities Law § 98; Jud. Law § 473.
16. Const., Art. 8, § 1.
17. Penal Law Art. 195, 200.
18. Gen. Mun. Law §§ 239-c(2)(c), 239-h(3)(c).
19. See Gen. Const. Law § 41.
20. Gen. City Law §§ 27(16), 81(11); Gen. Mun. Law § 239-c(1-a); Town Law §§ 267(11), 271(15); Village Law §§ 7-712(11), 7-718(16).
21. RPTL §§ 336, 523(3).
22. Const., Art. 13, § 5; Alt. County Gov't Law § 154; Gen. City Law § 4; Gen. Mun. Law § 51; Penal Law § 60.27(5), as amended by 2005 N.Y. Laws ch. 499, § 2; Pub. Off. Law §§ 33-36; Second Class Cities Law §§ 34, 44, 144; Village Law § 4-412(12).
23. This chart thus does not include, for example, public authorities or school districts, except as noted.
24. Similar provisions exist for members of police force of housing authority of any municipality (Gen. Mun. Law § 208-d (sic)) and members of police force of transit authority (Gen. Mun. Law § 208-e).
25. The provisions of the Second Class Cities Law apply, according to their terms, only to a city of the state which, on December 31, 1923, was a city of the second class, until such provision is superseded pursuant to the Municipal Home Rule Law, was superseded pursuant to the former city home rule law, or is or was otherwise changed, repealed, or superseded pursuant to law. Second Class Cities Law § 4. A city of the second class was one having a population of 50,000 to 175,000. Const., Art. 12, § 2 (1894, as amended in 1907).
26. A fire district under Town Law "is a political subdivision of the state and a district corporation . . . The officers and employees of a fire district, including the paid and volunteer members thereof, are officers and employees of such fire district and not officers or employees of any other political subdivision." Town Law § 174(7).

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