



VOTING RULES, REGULATIONS, & REQUIREMENTS

A Discussion of the Board of Education's Obligations

Presented by: Melanie J. Beardsley, Esq.



Agenda

- General Municipal Law
- District Policy
- Conflicts of Interest
- Voting Requirements, Recusals, etc.





Code of Ethics

- School Boards must adopt a code of ethics.
 - NY Gen. Mun. Law § 806.
- Board Policy 6110
 - Gifts
 - Confidential Information
 - **Conflicts of Interest**
 - Representing Others in Matters Before the District
 - **Disclosure of Interest in Contracts and Resolutions**
 - Investments in Conflict with Official Duties
 - Private Employment
 - Future Employment

Conflicts of Interest

- 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.
- 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.

N.Y. Gen. Mun. Law § 801.

What is an Interest?

- 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.
- 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.
- N.Y. Gen. Mun. Law § 800(3).

What is a Contract?

- 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.
- N.Y. Gen. Mun. Law § 800(2).

Exceptions

1. 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; (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);
2. 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;
3. 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;
4. 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;
5. The acquisition of real property or an interest therein, through condemnation proceedings according to law;

Exceptions

6. A contract with a membership corporation or other voluntary non-profit corporation or association including, but not limited to, rural electric cooperatives;
7. The sale of bonds and notes pursuant to section 60.10 of the local finance law;
8. 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;
9. 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;
10. 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:
 - a. the member of the governing body or board is elected and serves without salary;
 - b. 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;
 - c. 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.

Exceptions

1. 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;
2. A contract for the furnishing of public utility services when the rates or charges therefor are fixed or regulated by the public service commission;
3. 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;
4. 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;
5. 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.
6. A contract with a member of a private industry council established in accordance with the federal job training partnership act¹ 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.

N.Y. Gen. Mun. Law § 802(2)



Conflict of Interest

- Board member who is president and owns more than 5% of stock in a company and the school purchases oil from the company.
Appeal of Golden 32 Ed Dept Rep 202 (1992)
- Same contract as #1, but board member's spouse is sole owner of the company.
- Board member who is related by blood or marriage to a teacher seeking employment with the district and the board passes a resolution by less than 2/3 vote.
N.Y. Educ. Law § 3016.

No Conflict of Interest

- Board member who is a bank officer at the main office where the district has designated a branch of the bank as a depository for district funds as long as the board member (as an employee of the bank) would never have occasion to become involved in any district transactions occurring at the bank. N.Y. Gen. Mun. Law § 802(1)(a); see also N.Y. Opn. St. Comp. 77-504.
- Board members voting on the employment of, or collective bargaining agreements pertaining to their relatives. N.Y. Gen. Mun. Law § 800(3); N.Y. Educ. Law § 3016(2).
- Board member who is merely an employee of an entity that has a contract with the district where the board member's compensation is not directly affected as a result of the contract, and their duties do not directly involve the procurement, preparation or performance of any part of the contract. N.Y. Gen. Mun. Law § 802(1)(b); see *Appeal of Vivlemore*, 33 Ed Dept Rep 174 (1993)).
- Regardless of the board member's role, where the total amount paid pursuant to the contract or multiple contracts during the fiscal year to the district is less than \$750, there is no prohibited conflict of interest. N.Y. Gen. Mun. Law § 802(2)(e).

Determining Whether a Conflict of Interest Exists

- Is there a contract with the District?
- Does the board member in question have an interest in that contract?
- Is the board member authorized to exercise any of his/her/their powers or duties with respect to the contract?
- Is there any exception under the law (General Municipal Law Art. 18-Conflicts of Interest of Municipal Officers and Employees) that applies?



Consequences for Prohibited Conflicts of Interest

- Any contract willfully entered into where there is a prohibited interest is void and unenforceable. N.Y. Gen. Mun. Law § 804.
- Recusal does not remedy the conflict. *See Lexjac v. Bd. Of Trustees Muttontown*, 708 Fed. Appx. 722 (2d Cir. 2017).
- Any board member who knowingly and willfully violates the law or fails to disclose an interest may be guilty of a misdemeanor and subject to removal by the Commissioner of Education. N.Y. Gen. Mun. Law § 805.

Recusals

- Does Policy 6110 require or encourage recusal on a particular vote or discussion?
- Does the Board want to identify and include other standards relating to the conduct of officers and employees that may be deemed advisable under the law?
 - N.Y. Gen. Mun. Law § 806(1)(a)
- Examples
 - Board discussion and vote on the acceptance of a gift from a nonprofit when a board member sits on the nonprofit board. Opn. St. Comp. 2008-1.
 - Board granting of defense and indemnification in litigation where board member is a plaintiff. *Appeal of Laub et al*, 48 Ed Dept Rep 481 (2009)
- Board cannot adopt a code whose provisions are inconsistent with Article 18. *Appeal of Behuniak and Lattimore*, Dec. No. 12,447 (1991)





QUESTIONS?



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