

Beware the Pitfalls: Contracting With a Municipality

By Karen M. Richards

A municipality acting in its corporate capacity is generally held accountable for its contractual obligations in the same manner as a private person.¹ However, in New York, to create a valid contract with a municipality, there are prescribed statutory procedures that must be strictly complied with and followed. A municipal contract which does not comply with the requisite statutory requirements is invalid and unenforceable and results in no obligation or liability on the municipality.² Moreover, the “equitable powers of the courts may not be invoked to sanction disregard of statutory safeguards and restrictions.”³



Behind this general rule is an important public policy which recognizes that without statutory restrictions, any municipal official, regardless of his or her position, could dispose of public assets.⁴ The Court of Appeals and all four appellate departments recognize that statutory requirements are not mere technicalities, but rather are fundamental statutory restrictions that serve the purpose of protecting public assets.⁵

The burden of determining compliance with those statutory requirements rests upon those who deal with a municipality.⁶ The scope of a municipality’s authority is a matter of public record, and therefore, there is a conclusive presumption that the party dealing with a municipality is aware of the extent of that authority.⁷

Although application of this rule results in occasional hardship, it has been held that the loss should be ascribed to the negligence of the person who failed to ascertain the authority vested in the public agency with whom he dealt and statutes designed to protect the public should not be annulled for his benefit. Common sense dictates this course of action since statutory requirements could otherwise be nullified at the will of public officials to the detriment of the taxpaying public, and funds derived from public taxation could be subjected to waste and dissipation.⁸

Ordinarily, to create an express contract with a municipality, a written proposition or offer to contract

with the plaintiff must have been made to the proper municipal authorities, the terms of the written proposition or offer to contract with the plaintiff must have been accepted by an ordinance or local law, and the ordinance or local law must have been further acted upon by the signing of the proper municipal authorities of an actual contract.⁹ New York courts have long recognized that an ordinance or resolution enacted by a municipality, without more, does not create an express contract with the municipality.¹⁰ Many plaintiffs have found, to their surprise, that their reliance on ordinances or resolutions passed by a municipality did not create a legal obligation upon the municipality.

For example, in *H & R Project Associates, Inc. v. City of Syracuse*, the plaintiff sued for breach of contract, breach of implied contract, and detrimental reliance, claiming that it had reached an agreement with the city of Syracuse based on ordinances and a local law passed by the city’s Common Council.¹¹ In reliance upon these ordinances and the local law, the plaintiff, a building renovator, purchased and began renovating buildings for an art redevelopment project. The court rejected the plaintiff’s claims that the ordinances and local law created an agreement between the parties. The Syracuse City Charter provided that only the mayor, the commissioner of purchase, or any officer designated by the council could sign contracts, and it further provided that no contract was valid unless signed by an authorized officer and sealed by the official seal of the city. Since there was no compliance with these provisions of the City Charter, there was no valid contract, and the plaintiff’s lawsuit was dismissed.

As evidenced by the court’s decision in *H & R Project Associates, Inc.*, a plaintiff’s claim of breach of implied contract is likely to fail because there was no compliance with the municipality’s statutory requirements.¹² Again, the important public policy of safeguarding the public’s interest against “extravagance and collusion on the part of public officials” lies behind the rule against holding municipalities liable on an implied contract theory.¹³ Thus, even where a municipality accepted the benefits of a plaintiff’s services and knew that the plaintiff expected to be paid for the services provided to the municipality, no liability can result unless the prescribed statutory procedures were strictly followed.¹⁴

For example, in *City of Zanesville, Ohio v. Mohawk Data Sciences Corporation*, the city’s director of administration signed a contract for the lease of computer hardware from Mohawk, and for over one year, the city made monthly payments pursuant to the contract.¹⁵

The city later withheld future payments. Mohawk argued that the city should be estopped from challenging the validity of the contract since Mohawk satisfactorily performed its obligations and the city accepted the benefits of Mohawk's performance. The court found this argument was without merit because the city council never authorized the contract as required by statute. The failure of the city council to approve the contract "was not mere irregularity, but went to the heart of the contract's validity."¹⁶ As the court noted:

In New York, the mere acceptance of benefits by the city under a contract made without authority does not estop a municipal corporation from challenging the validity of the contract and from denying liability for materials furnished or services rendered under a contract not made or ratified by a board or officer acting under authority conferred by law and in the manner prescribed by law.¹⁷

The court therefore found that the contract between the parties was invalid and void.

In another case, the parties had entered into two contracts, one in 1967 and the other in 1977, which provided that the defendant could use the plaintiff's solid waste landfill upon payment of a proportionate share of the operating costs.¹⁸ Although the defendant had paid 80% of the landfill costs during the ten years following the expiration of the 1977 contract, the court found that this conduct did not create an implied contract to share in the costs associated with closing the landfill.¹⁹

Also, as a general rule, a claim against a municipality in quantum meruit is void as contrary to statute.²⁰ However, narrowly circumscribed exceptions exist to that general rule. One exception to the general rule is where the State orders the municipality to perform certain work.²¹

In *Vrooman v. Village of Middleville, Herkimer County*, the village was ordered by the State to construct a sewage treatment plant and to cease the discharge of sewage into State waters. The village entered into an agreement with the plaintiff to provide engineering services in the design and planning of the sewage treatment plant. After performing the services and obtaining State approval of its plans, the plaintiff submitted a bill to the village. When the village failed to pay the bill, the plaintiff brought an action against the village. The court found that even though the contract was void because the statutory appropriation process was not strictly followed in granting the contract, recovery based upon quantum meruit would not be contrary to the policy underlying the general rule because the project had been ordered by the State, the services

provided by the plaintiff were essential to the project, and the village benefitted from the plaintiff's services. "A plaintiff is entitled to recover from a municipality where, as here, he has entered in a contract in good faith, the municipality possesses the authority to enter into the contract, the contract is not violative of public policy and the circumstances indicate that if plaintiff is not compensated, the municipality would be unjustly enriched."²²

Recovery under the above exception has been limited to applying only where there was a requirement that the municipality engage in the project. For example, when an engineering firm sought to recover services provided under contract to Onondaga County in connection with its resources recovery project, the firm's claim was dismissed because there was no requirement that the county undertake such a project.²³ The Onondaga County Charter provided that "[n]o payment shall be authorized or made and no obligation incurred against the County except in accordance with appropriations duly made, or except as permitted otherwise by the local finance law."²⁴ It was undisputed that no appropriation was made and no borrowing was authorized for the plaintiff's services. According to the court, permitting the plaintiff to recover for its services without an appropriation would contravene the policy underlying the adoption of the Onondaga County Charter. "Although it may seem harsh to deny plaintiff payment for services rendered at the request of the municipal officials, plaintiff, in the absence of an appropriation, undertook the work at its own risk."²⁵

Another exception to the general rule is where a construction contract was awarded to a contractor (the original contractor) through a competitive bidding process and another contractor (a completion contractor) had to complete the work left unfinished by the original contractor. In *Aniero Concrete Co., Inc. v. New York City Construction Authority*, the city claimed that the completion contractor could not recover under a theory of quantum meruit because its involvement was not authorized by the competitive bidding process.²⁶ The court was not persuaded by the city's argument, noting that the original contract had been awarded through a competitive bidding process and the completion contractor was merely stepping in to complete the work left unfinished by the original contractor. The court allowed the plaintiff to proceed with an unjust enrichment claim because there was nothing to suggest that the procurement of either contractors' services involved dishonesty or improper behavior which would implicate the integrity of the process of awarding public construction contracts.

In conclusion, although some exceptions exist to the general rule that a contract with a municipality is valid only where there is strict compliance with statutory procedures, those exceptions are very narrow. A

party entering into an agreement with a municipality is presumed to have knowledge of the statutes which regulate the municipality's contracting powers and bears the risk of not receiving payment for its services if there was a failure to follow the requisite statutory procedures.

Endnotes

1. *Housing Works, Inc. v. Turner*, 179 F.Supp.2d 177 (S.D.N.Y. 2001), *aff'd by*, *Housing Works, Inc. v. Giuliani*, 56 Fed.Appx. 530 (2nd Cir. 2008).
2. *Genesco Entertainment v. Koch*, 593 F.Supp. 743 (S.D.N.Y. 1984); *Parsa v. State of New York*, 64 N.Y. 2d 143 (1941); *Walentas v. New York City Dept. of Ports*, 167 A.D.2d 211 (1st Dept. 1990), *appeal denied*, 78 N.Y.2d 857 (1991); *Mid-Atlantic Perfusion Associates v. Westchester County Health Care Corporation*, 54 A.D.3d 831 (2nd Dept. 2008); *Village of Lake George v. Town of Caldwell*, 3 A.D.2d 550 (3rd Dept. 1957), *aff'd*, 5 N.Y.2d 727 (1958); *H & R Project Associates, Inc. v. City of Syracuse*, 289 A.D.2d 967 (4th Dept. 2001).
A municipality can later ratify a contract that it entered into without following the requisite statutory requirements. *Imburgia v. City of New Rochelle*, 223 A.D.2d 44 (3rd Dept.), *leave to appeal denied*, 88 N.Y.2d 815 (1996).
3. *Lutzken v. City of Rochester*, 7 A.D.2d 498, 501 (4th Dept. 1959).
4. *Genesco Entertainment*, 593 F.Supp. 743.
5. *See e.g.*, *Parsa*, 64 N.Y.2d 143; *Walentas*, 167 A.D.2d 211; *Mid-Atlantic Perfusion Associates*, 54 A.D.3d 831; *Village of Lake George*, 3 A.D.2d 550; *H & R Project Associates, Inc.*, 289 A.D.2d 967.
6. *Genesco Entertainment*, 593 F.Supp. at 749; *Syracuse Orthopedic Associates v. City of Syracuse and County of Onondaga*, 136 A.D.2d 923 (4th Dept. 1988); *Parsa*, 64 N.Y.2d 142.
7. *Walentas*, 167 A.D.2d 211.
8. *City of Zanesville v. Mohawk Data Sciences Corp.*, 97 A.D.2d 64, 67 (4th Dept. 1983).
9. *Shepherd v. Whispering Pines, Inc.*, 188 A.D.2d 786 (3rd Dept. 1992); *Village of Lake George v. Town of Caldwell*, 3 A.D.2d 550 (3rd Dept. 1957), *aff'd*, 5 N.Y.2d 727 (1958).
10. *Seif v. City of Long Beach*, 286 N.Y. 382 (1941); *Shepherd*, 188 A.D.2d 786; *Pelham Commons Joint Venture v. Village of Pelham*, 308 A.D.2d 520 (2nd Dept. 2003); *RB Hempstead LLC v. Incorporated Village of Hempstead*, 2005 WL 119738 (Sup. Ct., Nassau Co. 2005).
11. 289 A.D.2d 967 (4th Dept. 2001). Ms. Richards represented the City of Syracuse in *H&R Project Associates, Inc. v. City of Syracuse*.
12. *Genesco Entertainment*, 593 F.Supp. at 750; *Seif*, 286 N.Y. at 387 (1941) (finding no obligation to pay for services requested by the mayor and tacitly approved by four of five council members where the statutory requirements necessary to bind the city were not strictly complied with).
13. *Vrooman v. Village of Middleville, Herkimer County*, 91 A.D.2d 833, 834 (4th Dept. 1982), *appeal denied*, 58 N.Y.2d 610 (1983); *Parsa*, 64 N.Y.2d at 148 (1984) ("Even though a promise to pay may be spelled out from the parties' conduct, a contract

between them may not be implied to provide 'rough justice' and faste[n] liability on [the municipality] when applicable statutes expressly prohibit it."); *Lutzken v. City of Rochester*, 7 A.D.2d 498, 499 (4th Dept. 1959) ("The doctrine of implied contract cannot be invoked to do rough justice and fasten liability where the legally requirements specifically prohibit.").

14. *Seif*, 286 N.Y. 382; *City of Zanesville, Ohio v. Mohawk Data Sciences Corp.*, 97 A.D.2d 64 (4th Dept. 1983); *Mid-Atlantic Perfusion Associates v. Westchester County Health Care Corporation*, 54 A.D.3d 831 (2nd Dept. 2008); *JRP Old Riverhead Ltd. v. Town of Southampton*, 44 A.D.3d 905, 909 (2nd Dept. 2007) (noting that "the doctrine of estoppel may be applied against a municipality in the case of extraordinary circumstances where the municipality acts wrongfully or negligently.").
15. 97 A.D.2d 64 (4th Dept. 1983).
16. *Id.* at 67.
17. *Id.*
18. *Town of Oneonta*, 191 A.D.2d 891.
19. *Id.*; *see also Syracuse Orthopedic Associates v. City of Syracuse*, 136 A.D.2d 923 (4th Dept. 1988) (finding that the city was not estopped from challenging the validity of an oral contract to reserve parking spaces for the plaintiff in a municipal parking garage because the city's charter provided that contracts were valid only if signed by an authorized officer); *M/A-Com, Inc. v. State of New York*, 78 A.D.3d 1293, 1294 (3rd Dept. 2010) (finding that the State's acceptance of benefits furnished under a contract made without the State Comptroller's approval did not estop the State from challenging the validity of the contract or from denying liability pursuant to it).
20. *Vrooman v. Village of Middleville, Herkimer County*, 91 A.D.2d 833 (4th Dept. 1982), *appeal denied*, 58 N.Y.2d 610 (1983).
21. *Id.* at 834.
22. *Id.*
23. *Gill, Korff and Associate, Architects and Engineer, P.C. v. County of Onondaga*, 152 A.D.2d 912 (4th Dept. 1989).
24. Section 610 of the Onondaga County Charter.
25. *Gill*, 152 A.D.2d at 914.
26. 2000 WL 863208 (S.D.N.Y. 2000); *see also Bianchi Industrial Services, LLC v. Village of Malone*, 41 A.D.3d 999 (3rd Dept. 2007); *Housing Works, Inc. v. Turner*, 179 F.Supp.2d 177 (S.D.N.Y. 2001) (finding that the plaintiff could not bring a claim of unjust enrichment against the city because neither the *Vrooman* nor *Aniero* exceptions applied where the plaintiff did not provide services at the behest of a higher State authority and where it could not be said that the plaintiff was merely stepping in mid-project to complete a contract that had previously been approved and registered by another party).

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