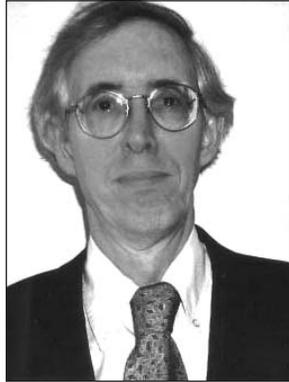


Non-Article 18 Conflicts of Interest Restrictions Governing Counties, Cities, Towns, and Villages Under New York State Law

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.¹ 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.² 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. . . ."³ 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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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.⁴

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;⁵ and an elected or appointed county executive may not hold another elective office, with certain exceptions.⁶ Similarly, a common council member may not hold any office paid for with city funds.⁷ Nor may a member of a town board serve on the town's zoning or planning board;⁸ the same rule applies to a member of a village board of trustees.⁹

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;¹⁰ and a town justice may not be employed as a police officer or peace officer (and not just in the same town).¹¹

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.¹² So, too, a member of a municipal urban renewal agency may be an official or employee of the municipality.¹³

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.¹⁴ 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.¹⁵ And most readers are

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

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.¹⁸ 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,¹⁹ 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.²⁰

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.²¹ 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.²²

Political Subdivisions²³ 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 ²⁴
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 or 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 ²⁵	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 ²⁶	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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