Login | Subscribe | Translate |

JOIN OUR TEAM

About Unclaimed Funds Retirement Local Government Agencies
Vendors Reports Newsroom

Opinion 2000-12

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

CONFLICTS OF INTEREST -- Codes of Ethics (requiring abstention from voting on salaries of relatives) -- Family Relationships (abstention from voting on salaries of relatives)

GENERAL MUNICIPAL LAW §§801, 806: There is no provision in article 18 of the General Municipal Law (§800 et seq.) that prohibits a town board member from voting on salaries for family members who are elected or appointed town officials. Pursuant to General Municipal Law §806, however, a town board may require in its code of ethics that town board members abstain from voting on resolutions fixing the salaries of relatives who are town officials and, even if the code of

ethics does not require abstention, the affected board members should recuse themselves from discussion and abstain from voting on matters relating solely or primarily to the salaries of family members.

You ask whether town board members are required to abstain from voting on resolutions setting salaries for family members who serve as various town officers.

Article 18 of the General Municipal Law (§800 et seq.) contains provisions of law that relate to conflicts of interest of municipal officers and employees. Among other things, article 18 prohibits certain interests in contracts of the municipality (General Municipal Law §801), requires disclosure of certain interests in contracts (General Municipal Law §803), prohibits the receipt of gifts in excess of $75 in certain circumstances (General Municipal Law §805-a[1]), prohibits the disclosure of confidential information (General Municipal Law §805-a[2]) and prohibits appearances before municipal boards in certain circumstances (General Municipal Law §805-a[3], [4]). There is no provision in article 18, however, that prohibits a governing board member from voting on salaries for family members who are elected or appointed town officials (cf. General Municipal Law §800 [3][a], which provides that a municipal officer or employee is deemed to have an interest in contracts of his or her spouse except contracts of employment with the municipality; see also General Municipal Law §801, which provides that the prohibition in article 18 on interests in certain contracts shall not be construed as precluding "the payment of lawful compensation ... of any municipal officer or employee in one or more positions of public employment, the holding of which is not prohibited by law").

Although article 18 does not require a board member to abstain from voting on salaries of relatives who are municipal officers or employees, we note that General Municipal Law §806 requires the governing board of each county, city, town, village and school district to adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. The code must provide, inter alia, standards with respect to disclosure of interest in legislation and may contain such other standards relating to the conduct of officers and employees as may be deemed advisable (General Municipal Law §806[1]). The code may regulate or prescribe conduct not expressly prohibited by article 18, and generally may provide for the prohibition of conduct (id.; see also, e.g., 1992 Opns St Comp No. 92-30, p 78). Pursuant to this authority, it is our opinion that a town board may require in its code of ethics that town board members abstain from voting on resolutions fixing the salaries of relatives who are town officials (see, e.g., Opn No. 92-30, supra; 1991 Opns St Comp No. 91-18, p 61; but see 30 Ed. Dept. Repts. Decision No. 12, 447, p 236).

Further, we note that the courts of this State have held public officials to a high standard of conduct and, on occasion, have negated certain actions which, although not violating the literal provisions of article 18 of the General Municipal Law or a code of ethics, violate the spirit and intent of the statute, are inconsistent with public policy, or suggest self-interest, partiality or economic impropriety (see, e.g., Zagoreos v Conklin, 109 AD2d 281, 491 NYS2d 358; Matter of Tuxedo Conservation and Taxpayers Association v Town Board of the Town of Tuxedo, 69 AD2d 320, 418 NYS2d 638; Conrad v Hinman, 122 Misc 2d 531, 471 NYS2d 521). Based on these principles, to

serve to avoid even an appearance to impropriety we believe that, even if a town's code of ethics does not require abstention, the affected board members should recuse themselves from discussions, and abstain from voting, on matters relating solely or primarily to the salaries of relatives (but see 1991 Attorney General [Informal Opinions] 91-70, discussing abstention and recusal in the event that multiple board members have an interest in legislation before the board resulting in the lack of quorum).

August 18, 2000
Gerald O. Keller, Supervisor
Town of Glen

OUR OFFICE

About Comptroller DiNapoli

About the Comptroller's Office

Career Opportunities

Diversity Management

Intergovernmental and Community Affairs

Procurement Opportunities

TOOLS

Fiscal Monitoring

NYS Payroll Online

Open Book New York

Retirement Online

Search for Lost Money

Statewide Financial System

More...

INITIATIVES

Comptroller's Legislative Program

Investing in New York

Minority- and Women-Owned Business Enterprises (MWBEs)

HELP

Contact Us

Forms and Publications

Freedom of Information Law (FOIL)

Legal Opinions

Report Government Fraud

SUBSCRIBE TO THE COMPTROLLER'S WEEKLY NEWSLETTER

Email Address

SUBSCRIBE

HOW WOULD YOU RATE OUR WEBSITE? ☆ ☆ ☆ ☆ ☆

Site Index | Career Opportunities | Contact Us | Privacy and Links Policies | Regulations | Accessibility | FOIL