

Article 18 of the General Municipal Law and
Decisional Law Relating to Conflicts of Interest and Ethics

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Structure and Scope of Article 18

- Establishes State-wide rules outside of NYC.
 - State-wide rules do **not** address every type of conflict of interest.
 - Focused mainly on business relationships with municipalities.
 - Addresses several other ethical issues.
 - Requires disclosure/prohibits activities in certain instances.



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Application of Article 18
(GML § 800[4], [5])

- Applies to “municipalities” including:
 - counties, cities, towns, villages, school districts, BOCES, public libraries, district corporations (e.g. fire districts), town and county improvement districts, and consolidated health districts, and IDAs.
- Does **not** apply to NYC or to most local public authorities.
- Does apply to IDAs



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Application of Article 18 (cont'd)

- Applies to “municipal officers and employees”:
 - Paid or unpaid.
 - Members of administrative boards, commissions or other municipal agencies.
 - Fire chiefs and assistant fire chiefs.
- Does **not** apply **solely** by reason of status as a volunteer firefighter or civil defense volunteer.

Prohibition on Interests in Contracts

- Unless a **statutory exception** applies, municipal officers and employees are prohibited from having an “**interest**” in a “**contract**” with the municipality for which they serve when they have certain official **powers or duties** in relation to the contract.

Prohibited Interests: How to Determine

- Must examine four issues:
 - “Contract”
 - “Interest”
 - Powers and duties
 - Exceptions

“Contract” (GML § 800[2])

- Contract:
 - “Claim, account or demand” against a municipality.
 - “Agreement” with a municipality.
 - Can be express or implied.
- Contract also includes:
 - Designation of depository of public funds.
 - Designation of newspaper for publication of official notices etc.

Not a “Contract”

- Contract does **not** include:
 - Land use actions (e.g. zoning changes, variances, site plan or subdivision approvals, building permits).
 - Inter-municipal agreements.

“Interest” (GML § 800[3])

Interest:

- Direct or indirect pecuniary (monetary) or material benefit as a result of a municipal contract.

- Deemed interests:
- Contracts of spouse, minor children or dependents, **except** employment contracts.
 - Contracts of firm, partnership or association of which municipal officer or employee is a member or employee.
 - Contracts of a corporation of which municipal officer or employee is an officer, director or employee, or directly or indirectly owns or controls any stock.

Powers and Duties (GML § 801[1])

- Section 801 powers and duties:
 - Individually **or as a member of a board**:
 - Negotiate, prepare, authorize or approve the contract;
 - Authorize or approve payment under the contract;
 - Audit bills or claims under the contract; or
 - Appoint an officer or employee having any of these functions

Exceptions (GML §§ 801, 802)

Statutory exceptions include:

- Lawful compensation and necessary expenses.
- “Duties and remuneration.”
- Pre-existing contracts (but not renewals).
- Stockholdings of less than 5%.
- Contracts with not-for-profits.
- Contracts aggregating less than \$750 in a fiscal year.

Exceptions (continued)

- Purchases and public work by municipalities in counties with a population \leq 200,000 under certain circumstances.
- Purchase of real property with court approval.
- Acquisition of real property by condemnation.
- Certain private sales of bonds or notes.
- Designation of a newspaper for publication of official notices etc.
- Designation of bank or trust company as depository, paying agent, registration agent or for the investment of funds exception (not usually applicable to CFOs, treasurers and their staffs).

Not Exceptions

No exceptions for:

- Competitive bidding/Request for Proposal;
- Disclosure;
- Abstention or recusal; or
- Emergencies.

Additional Prohibition for CFOs, Treasurers and Their Staff (GML §§ 801[2], 802)

- Unless a statutory exception applies, the Chief Fiscal Officer, treasurer and their staff are prohibited from having an interest in a bank or trust company designated as depository, paying agent, registration agent or for the investment of funds.
- Statutory exception applies if prohibition would require designation of bank or trust company located **outside** the municipality.

Disclosure of Interests in Contracts (GML § 803)

- **Written** disclosure of nature and extent of interest generally required when municipal officer or employee (or spouse) has, will have or later acquires an interest in any actual or proposed contract.
- Disclosure must be made as soon as individual has knowledge of an actual or prospective interest.

Disclosure (cont'd)

- Disclosure must be made publicly to:
 - The individual's **immediate supervisor**; and
 - The municipal **governing body**, which must include the disclosure in the official record of its proceedings.
- Disclosure **not** required when exceptions in GML § 802(2) apply (e.g. Stockholdings of less than 5%; Contracts aggregating less than \$750 in a fiscal year).
- Disclosure does not cure a prohibited interest.

Violations (GML §§ 804, 805)

- Contract willfully entered into in which there is a prohibited interest is null, void and wholly unenforceable.
- Municipal officer or employee who willfully and knowingly violates the prior provisions of article 18 is guilty of a misdemeanor.

Additional Prohibitions (GML § 805-a)

- Municipal officers and employees prohibited from:
 - Soliciting gifts;
 - Accepting or receiving any gift having a value of \$75 or more where it can be reasonably inferred that the gift is intended to influence the performance of official duties or as a reward;
 - Disclosing or using confidential information for private purposes;

Additional Prohibitions (cont'd)

- Rendering compensated services in relation to any matter before the individual's own agency, or any agency over which he or she has jurisdiction or appointment power.
- Rendering compensated services in relation to any matter before any municipal agency when compensation is dependent or contingent upon action by the agency.

Local Codes of Ethics (GML § 806)

- Mandatory for counties, cities, towns, villages, school districts and fire districts.
- Codes adopted under article 18 must contain provisions with respect to:
 - Disclosure of interest in legislation;
 - Holding investments in conflict with official duty;
 - Private employment; and
 - Future employment.

Local Codes of Ethics (cont'd)

- May also contain additional standards relating to conduct of municipal officers and employees, but may not be inconsistent with article 18.
- Chief executive officer required to cause copy of code to be distributed to each municipal officer or employee.

Boards of Ethics (GML § 808)

- Optional for counties and other municipalities; county board may act with respect to municipality which has not established its own board.
- Board renders advisory opinions upon written request of municipal officers or employees with respect to article 18 or a local code of ethics.

Disclosure of Interests in Certain Land Use Matters (GML § 809)

- Every application, petition, or request for a variance, change of zoning, plat approval etc. pursuant to a municipality's zoning and planning regulations must disclose the name, residence, and nature and extent of any interest in the applicant held by any:
 - State officer;
 - Officer or employee of the municipality; or
 - Officer or employee of a municipality of which such municipality is part.
- Disclosure obligation imposed on person or entity making the application, not on the public officer or employee having the interest.

Posting of Statute (GML § 807)

- CEO of a municipality must cause copy of GML §§ 800-809 to be posted in each public building in a place conspicuous to the municipality's officers and employees.

Common Law “Conflicts of interest”

- Situations not governed by article 18 or a code of ethics.
- Case-by-case determinations.
- Courts have invalidated board actions based on factors such as self-interest, partiality or economic impropriety.

Resources

Telephone:
(518) 474-5586

- OSC Advisory Legal Opinions from 1988-present are available on the OSC website:
www.osc.state.ny.us

Thank You
