



OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

**Conflicts of Interest
of Municipal Officers
and Employees**



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AS A MUNICIPAL OFFICER OR EMPLOYEE, your job by its very nature places you in a position of public trust. You are responsible for ensuring that public resources are used in the best interests of the public. You also have a duty to use the limited public resources available to you as effectively and efficiently as possible. When serving in your public capacity, the interests of your municipality must come before your own. In fact and appearance, your actions and interests must be above reproach. This brochure is intended to help you better understand New York State law as it pertains to conflicts of interest, and your responsibilities when your public and private interests conflict.

What is a conflict of interest?

You may have heard of the phrase “conflict of interest.” The phrase can apply in a variety of situations which all have one thing in common: an individual with divided loyalties, such as when a person has to act on behalf of the public in connection with a matter that affects his or her personal interests. Not all conflicts of interest, however, are prohibited by law.

What State laws govern conflicts of interest on the part of municipal officers and employees?

In general, conflicts of interest on the part of municipal officers and employees are governed by Article 18 of the General Municipal Law. Among other things, Article 18 regulates your business dealings with your municipality. However, not all of your contracts or relationships with your municipality are prohibited.

Who does the law apply to?

If you are an officer or employee of a municipality, the law applies to you, whether you are paid or unpaid, or a member of a municipal board, commission or agency. The term municipality encompasses almost every type of local government entity, including counties, cities (other than New York City), towns, villages, school districts, BOCES, fire districts, public libraries, town and county improvement districts, urban renewal agencies and industrial development agencies.

What makes a conflict of interest under Article 18?

Article 18 prohibits municipal officers and employees from having interests in contracts with the municipality for which they serve, but only under

certain circumstances. In order for a municipal officer or employee to have a prohibited interest in a contract (one that violates the law), four conditions must be met: (1) there must be a contract; (2) the individual must have an interest in the contract; (3) the individual, in his or her public capacity, must have certain powers or duties with respect to the contract; and (4) the situation must not fit within any of the exceptions listed in law.

If you have an interest in a contract, and you do not have any of the powers or duties that could cause the interest to be prohibited, or if one of the statutory exceptions applies, then the interest is permitted. However, in most cases you will have to disclose your interest.

What is a contract?

A contract includes any claim, account, demand against or agreement with a municipality – verbal or written, express or implied. Almost any business dealing you have with your municipality will involve a contract. Examples of contracts include purchase or sale agreements, construction agreements and service contracts, as well as vouchers for payment submitted to a municipality. A contract also includes the naming of a depository of public funds or the naming of an official newspaper of a municipality.

What is an interest in a contract?

You have an interest in a contract when you receive a direct or indirect financial or material benefit as a result of a contract with your municipality. This is a factual determination. You are also deemed to have an interest in the contracts of certain individuals and business entities with which you have relationships.

With one exception, you are deemed to have an interest in the contracts of your spouse, your minor children and your dependents. The one exception is for contracts of employment which these individuals have with your municipality. Thus, if your spouse, minor child or dependent is hired as an employee by your municipality, you are not deemed to have an interest in that contract as a result of his/her employment.

You are also deemed to have an interest in the contracts of any firm, partnership or association of which you are a member or employee. Similarly, you are deemed to have an interest in the contracts of any corporation of which you are an officer, director or employee, as well as in the contracts of any corporation of which you directly or indirectly own or control any stock.

Just because you have an interest in a municipal contract does not necessarily mean that your interest is prohibited. In order for the interest to be prohibited, you must have one or more of the powers or duties described below, and the situation must not fit within one of the statutory exceptions also described below.

What powers and duties can cause an interest in a contract to be prohibited?

If you have an interest in a contract with your municipality, the interest may be prohibited, but only if you have certain official powers or duties with respect to that contract. To have a prohibited interest in a contract, you must have the power or duty, either individually or as a member of a board, to:

- a. Negotiate, prepare, authorize or approve the contract, or authorize or approve payment under the contract;
- 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 in “a” or “b” above.

Ordinarily, members of the governing board of a municipality will have one or more of these powers or duties. In any situation, what is relevant to determining whether there is a prohibited interest is the *existence* of any of these powers and duties, not whether you choose to exercise them. In other words, merely refraining from acting in connection with a contract will not prevent you from having a prohibited interest in that contract. Thus, if you have an interest in a contract, and have at least one of the powers and duties listed above, the interest is prohibited unless one of the statutory exceptions discussed below is applicable.

There is also an additional rule applicable only to chief fiscal officers, treasurers and their deputies and employees. Unless an exception applies, none of these officers or employees shall have an interest in a bank or trust company designated as a depository, a paying agent or for the investment of funds of the municipality of which he/she is an officer or employee.

What are the statutory exceptions that prevent an interest in a contract from being prohibited?

If you have an interest in a contract with your municipality, and have any of the powers and duties discussed above, the interest is prohibited unless a

statutory exception is applicable. There are 17 statutory exceptions. Ordinarily, if one of these exceptions applies, an interest in a contract is permissible, even though you may have one or more of the powers and duties discussed in the preceding section. The seven most common exceptions are:

1. Payments of salary or other lawful compensation and necessary expenses to an officer or employee in one or more positions of public employment.
2. Interests in contracts prohibited solely by reason of being employed as an officer or employee of a private business if (a) the individual's private compensation is not directly affected as a result of the contract, and (b) the duties of the private employment do not directly involve the procurement, preparation or performance of the contract.
3. Contracts entered into prior to the time that a municipal officer or employee is elected or appointed, but not renewals of those contracts.
4. Contracts with membership corporations or other voluntary not-for-profit corporations or associations.
5. Purchases or public work by a municipality (other than a county), located within a county having a population of 200,000 or less, in which a member of the governing board or body has a prohibited interest. This exception applies only when:
 - a. The member of the governing body or board is elected and serves without salary;
 - b. The purchases total less than \$5,000 in any fiscal year, the governing body or board has followed its procurement policies and procedures (see General Municipal Law, section 104-b) and the procurement process indicates that the contract is with the vendor making the lowest dollar offer; and
 - c. The purchase or public work contract is approved by unanimous vote of the governing board or body, except the interested member who must abstain.
6. Contracts with a corporation if the municipal officer or employee directly or indirectly owns or controls less than 5 percent of outstanding stock.
7. Total consideration payable under all contracts in which a municipal officer or employee has an interest do not exceed \$750 during a fiscal year.

There are *no* exceptions for contracts that are competitively bid or contracts let in emergency situations. There are also *no* exceptions for when an individual discloses his or her interest, recuses him or herself or abstains from the discussion or vote on a matter.

What interests must be disclosed?

With certain limited exceptions, if you or your spouse has, will have, or later acquires an interest in a contract with your municipality, you must disclose the nature and extent of that interest in writing. You must make the disclosure as soon as you become aware of the actual or prospective interest. The disclosure must be made publicly, to your immediate supervisor and to the governing body of the municipality, which must include the disclosure in the official record of its proceedings.

What are the consequences of prohibited interests in contracts?

If you willfully enter into a contract in which you have a prohibited interest, the contract is null, void and unenforceable. If you willfully and knowingly violate the law by entering into a contract in which you have a prohibited interest, or by failing, when required, to disclose an interest in a contract, you may be guilty of a misdemeanor.

Besides being prohibited from having certain contractual interests, what other conduct of municipal officers and employees is restricted?

In addition to defining the circumstances when municipal officers and employees may not have interests in contracts, Article 18 prohibits certain other conduct on the part of municipal officers and employees:

1. You are prohibited from soliciting a gift. You are also prohibited from accepting a gift having a value of \$75 or more under circumstances where it can be reasonably inferred or expected that the gift was intended to influence you in the performance of your official duties or was intended as a reward for any official action.
2. You are prohibited from disclosing or using confidential information acquired in the course of your official duties to further your personal interests.
3. You are prohibited from performing services for compensation involving matters before any municipal agency (a) of which you are an officer, member or employee, (b) over which you have jurisdiction,

or (c) to which you have the power to appoint any member, officer or employee.

4. You are prohibited from performing services for compensation involving matters before any agency of your municipality when the compensation is dependent or contingent on any action by the agency with respect to these matters. Fees based upon the reasonable value of the services rendered, however, are not prohibited.

Can municipalities establish their own standards of conduct?

Yes, and some municipalities are required to do so. Article 18 requires the governing body of each county, city, town, village, school district and fire district to adopt a code of ethics setting forth standards of conduct reasonably expected of their officers and employees. Other municipalities are authorized, but not required, to have codes of ethics.

What is a code of ethics?

A code of ethics is a document which sets forth standards of conduct for the guidance of a municipality's officers and employees.¹ A code of ethics must address disclosure of interests in local legislation, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and other relevant standards relating to the conduct of municipal officers and employees. A code of ethics may regulate or prescribe conduct which is not expressly prohibited by Article 18, but it may not authorize conduct that is prohibited by Article 18. Such codes may also provide for the prohibition of conduct or disclosure of information and the classification of employees or officers. You should review your municipality's code of ethics to become familiar with the standards of your municipality.

What else does a municipal officer or employee need to know?

You also need to be aware that the courts of New York State have held public officials to a high standard of conduct. On occasion, the courts have negated certain actions which were not in violation of the literal provisions of Article 18 or a municipality's code of ethics, but which were in violation of the spirit and intent of the statute, were inconsistent with public policy or suggested self-interest, partiality or economic impropriety. Therefore, if

¹ A model code of ethics for fire districts is available on the State Comptroller's website at www.osc.state.ny.us/localgov/fdreform/modelcoe.pdf.

a situation involves conduct that does not technically violate either Article 18 or your municipality's code of ethics but still raises potential questions of conflict of interest, your inquiry should not end there. Depending on the facts, it still may be advisable for you to recuse yourself or to abstain from participating in the discussion or vote on a particular matter.

Where can a municipal officer or employee get advice about potential conflicts of interest?

Article 18 authorizes counties to establish boards of ethics to provide advisory opinions with respect to Article 18 and codes of ethics to the officers and employees of municipalities within the county. Similarly, the municipalities within a county are also authorized to establish their own boards of ethics. If your municipality has established its own board of ethics, requests for advisory opinions should be directed to the municipal board. Aside from contacting the appropriate board of ethics, you should also consider requesting advice from your municipality's legal adviser. The Office of the State Comptroller's Division of Legal Services is also available as a resource in connection with Article 18 and can be reached at (518) 474-5586. You can also contact the Division of Local Government and School Accountability at localgov@osc.state.ny.us. Please provide us with a daytime telephone number in your messages.

According to General Municipal Law, the chief municipal officer of each municipality must conspicuously post Sections 800-809 of Article 18 in each public building. The Office of the State Comptroller offers a two-page, tabloid-sized poster of the Law for your convenience. To request a copy or copies, contact the Division of Local Government and School Accountability at localgov@osc.state.ny.us, or by phone at (518) 474-4037.

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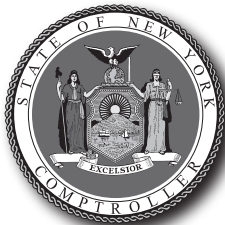
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