

Conflicts of Interest and Ethics

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2024 CAASNY Annual Meeting

Conflict of Interests and Ethics

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Introduction – Brief History of Article 18 of the General Municipal Law

- Establishes State-wide rules outside of New York City
 - State-wide rules do not address every type of conflict of interest.
 - Focused mainly on business relationships with municipalities.
 - Addresses several other ethical issues (e.g. gifts, confidential information, compensated services before municipal agencies, financial disclosure)
 - 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 Industrial Development Agencies (IDAs).
 - Does **not** apply to NYC or to most local public authorities


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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.
 - In the case of a county, includes any officer or employee paid from county funds.
 - Fire chiefs and assistant fire chiefs.
- Does **not** apply **solely** by reason of status as a volunteer firefighter or civil defense volunteer.


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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.


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Not a “Contract”

- Contract does **not** include:
 - Certain land use actions (e.g. issuance of building permits, licenses, zoning changes, variances, site plans or subdivision approvals) *But see, GML Section 809.
 - Inter-municipal agreements (see, Opn No. 2001-14)
 - Gift to a municipality (see, Opn No. 2008-1)


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“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 a 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, 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

Statutory 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.

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Statutory Exceptions (cont'd)

- 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).

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Not a Statutory Exception

- 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, CFO, 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.

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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 § 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.

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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.

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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;

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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.



Local Codes of Ethics (cont'd)

- Ways in which procurement activities may be addressed in code of ethics with inclusion of provisions, such as:
 - Purchasing activities are to be conducted in a manner that is in accordance with law, in the best interests of the local government, avoids favoritism, wastefulness, extravagance, fraud and corruption, and fosters honest competition to obtain the greatest economic benefit for every tax dollar expended.
 - Procurement officials should insist on and expect honesty in sales representation whether offered verbally or in writing, through the medium of advertising, or in the sample of a product submitted.
 - Procurement officials must treat all vendors and prospective vendors fairly and equally.
 - Procurement officials should discourage the offer of gifts and decline gifts that in any way might influence or have the appearance of influencing the procurement of goods or services (see also, GML § 805-a[1][a]).



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.

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Financial Disclosure Requirements

GML §§ 810-812

- Political Subdivisions – which is defined to include counties with population of 50,000 or more, are required to impose on certain individuals an obligation to file an annual financial disclosure statement.
- Broad discretion under article 18 of the GML to promulgate own annual financial disclosure form to identify by name of office, or by title or classification, those individuals who must file the disclosure form.
- Board of ethics, if established, may administer the annual financial disclosure system.

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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.

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Disclosure of Interest in Certain Land Use Matters (cont'd)

- Disclosure obligation imposed on person or entity making the application, not on the public officer or employee having the interest.

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Posting of Statute

(GML § 807)

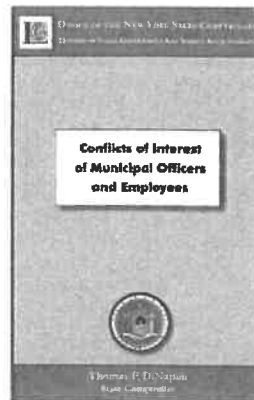
- CEO of a municipality must cause copy of GML §§ 800-809 to be posted in each public building in a place conspicuous to the municipality's officers and employees.

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

- Contact Legal Services
 - (518) 474-5586
- OSC Publications
 - <https://www.osc.state.ny.us/local-government/resources/ethics>
- OSC Advisory Legal Opinions from 1988-present
 - <https://www.osc.state.ny.us/legal-opinions>




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Thank You

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