Conflict of Interests and Ethics

GML Article 18, 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.
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.
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.
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.

(GML § 800[3])
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 (cont’d)

– Purchases and public work by municipalities in counties with a population ≤ 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, 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.
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.
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 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.
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
Questions?

Division of Legal Services
(518) 474-5586