Needed: A New Statewide Ethics Code for Municipalities

By Steven G. Leventhal

Article 18 of the General Municipal Law establishes minimum standards of conduct for the officers and employees of all municipalities within the state other than the City of New York.[1] It was adopted in 1964 with the following declaration of policy and purpose:[2]

> As government becomes increasingly complex, as our democratic processes draw citizens from every walk of life, there is increasing need for known standards of ethical conduct as a guide for public officers.... In support of these basic standards, it is the purpose of this chapter to define areas of conflicts of interest in municipal transactions, leaving to each community the expression of its own code of ethics.
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> ... [T]he discernment of the offending case must be made certain, its elimination sure. Existing law is too complex, too inconsistent, too overgrown with exceptions, for such a clarity of understanding to be possible. Basic concepts must be retained, but something more than recodification is needed.
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> There is another and equally important objective: a formula of conduct which is not only clear but reasonable, one which will permit governmental employees to share the normal benefits of the democratic society and economy they serve. If government is to attract and hold competent administrators, public service must not require a complete divesting of all proprietary interests. Real conflict must be rooted out, without condemning the inconsequential....

Article 18 has not accomplished these lofty purposes. For nearly 20 years, leading commentators, bar associations, and public interest groups have criticized Article 18, and called for a new statewide ethics code for local municipalities.[3] As Professor Mark Davies wrote in the first of his trilogy of articles entitled "Enacting a Local Ethics Law"[4] published in the *Municipal Lawyer*,

> Article 18 contains huge gaps, makes no sense, provides little guidance to municipal officials or their attorneys, imposes a financial disclosure system that is charitably described as asinine, and, in the one area it does regulate—namely, the prohibition on municipal officials having an interest in certain contracts with his or her municipality—overregulates to such an extent that it turns honest officials into crooks.

Unfortunately, the calls for an overhaul of Article 18 have not been heeded. To help keep up the drumbeat, this article will revisit some of the statute's deficiencies.

A municipal ethics code should provide clear guidance to municipal officers and employees, and assist them in avoiding ethical missteps before they occur.

Clarity is particularly important where the rules of conduct for municipal officers and employees differ from those prevalent in the private sector. Yet in these very areas, Article 18 of the New York General Municipal Law often falls short.

The Vague Prohibition Against Gifts and Favors

One obvious example of a standard of conduct applicable in the public sector that differs markedly from the practices prevalent in the private sector is the rule restricting the solicitation or acceptance of gifts or favors by municipal officers or employees. In the private sector, gifts are freely exchanged. The practice is so widely accepted that the Internal Revenue Service recognizes business entertainment as an ordinary and necessary business expense.[5] However, the solicitation or acceptance of gifts and favors by government officers or employees tends to create an improper appearance at the least, and may be a corrupting influence. In some cases, this private sector norm may amount to a public sector crime.[6]

In a bribery prosecution, the People must prove beyond a reasonable doubt that there was a corrupt purpose in making the offer or in conferring the benefit.[7] But, even in the absence of a corrupt purpose, a defendant may be convicted of the misdemeanor of giving or receiving unlawful gratuities where a benefit

is offered to, or conferred upon, an official for having engaged in official conduct that he or she was required or authorized to perform, and for which the official was not entitled to any additional compensation.[8]

Nevertheless, an unwary public officer or employee may be insensitive to the different standards that govern conduct in the public sector, particularly where the officer or employee is accustomed to the standards of the private sector. On December 2, 2003, *Newsday* reported that:

> A combative Nassau University Medical Center president testified at a state ethics hearing yesterday that he didn't know it was improper to accept a hockey ticket, an expensive dinner and a trip to Missouri from companies bidding on a $24 million contract… [the president] also testified that he didn't realize that working for the public benefit corporation classified him as a state employee…[he said] his $45 rack-of-lamb dinner at Carltun-on-the-Park in Eisenhower Park and his trip to Missouri helped him negotiate a better price from the contractors who were picking up the tab.

The investigation by the State Ethics Commission resulted in an assessment against the public official equal to three times the benefit that he received.

In an informal advisory letter cited with approval by the New York State Ethics Commission in Advisory Opinion No. 94-16 (interpreting the gift regulations imposed on State employees by the Public Officers Law), the Federal Office of Government Ethics wrote:

> We frequently hear government employees claiming that they cannot be bought with lunch and that to prohibit them from accepting an occasional meal from a person doing business with them impugns their integrity. We are also told that the private sector conducts business at such occasions and that government employees must participate in the same kinds of activities in order to get the government's position disseminated and understood. We sincerely hope and expect that government employees cannot be bought for lunch; we do not agree that for the government to have such a restriction impugns the integrity of its employees nor that the entertainment standards for businesses dealing with one another is the standard that should be adopted by a government. The standards involved in public service are based on different considerations and include a concept of avoiding situations where an employee's integrity can be made an issue.[9]

Nevertheless, the gifts and favors come, particularly at holiday time, when the intentions of the donor and recipient may reflect the generous spirit of the season, and may be unrelated to any improper purpose.

Thus, in this difficult area, where generally accepted private sector behavior abounds as a misleading example to unwary municipal officers and employees, direction and guidance in the form of clear standards of conduct is vitally needed. Yet, Article 18 fails to provide that guidance.

General Municipal Law ("GML") § 805-a provides, in pertinent part, that no municipal officer or employee shall:

> directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

This statute requires a municipal officer or employee to puzzle through two levels of abstraction, and to divine what one reasonable person could infer about another person's intention in order to determine whether he or she may accept a gift having a value of $75 or more. As a result, in a 1975 decision, a Fulton County trial court declared that the statute was unconstitutionally vague because it did not contain any "standard or guidelines" by which a determination could be made, and dismissed an indictment charging the defendant with its violation.[10] However, in that same year, the Third Department upheld a disciplinary action imposed on a town employee for violating a similar local law without addressing the constitutional issue.[11] Nevertheless, constitutional or not, so vague a standard of conduct gives inadequate guidance to well-meaning municipal officers and employees and thus fails as an ethics regulation.

A different approach to regulating gifts was recommended by Professor Mark Davies in his 1993 Model Code of Ethics.[12] The Model Code would prohibit the

solicitation of gifts from any person who has received or sought a municipal benefit within the previous 24 months, and would prohibit the *acceptance* of gifts from any person who a municipal officer or employee knows or has reason to know has sought or received a municipal benefit within the previous 24 months.

A hybrid approach was taken in the Lobbying Act, which regulates gift giving.[13] The Lobbying Act begins with a familiar sounding prohibition against gifts to a public official, or to the official's spouse or unemancipated child, unless it is not reasonable to infer that the gift was intended to influence the public official. The Act further prohibits any gift from certain "disqualified sources," such as a person who is regulated by the official's agency, negotiates with the agency, does business with the agency, seeks to contract with the agency or has contracts with the agency.[14] The Lobbying Act excludes gifts that fall within a list of exceptions, such as complimentary attendance, including food and beverages, at charitable, political or ceremonial events; awards, honorary degrees, promotional items of nominal value, goods and services available to the public on the same basis, gifts from family and friends, campaign contributions, certain travel expenses; and meals and refreshments while attending professional or educational programs.[15]

It is high time that GML Article 18 be revised, and that the standards of conduct related to the solicitation or acceptance of gifts be clarified. Until this happens, local municipalities should exercise the authority granted to them by GML § 806 to adopt their own clear standards of conduct in the form of a local ethics code.[16]

The Undefined Term: Confidential Information

Another area of distinct difference between the culture of the private and public sectors is in the extent to which information may be withheld as "confidential."

Private sector firms devote considerable resources to the protection of proprietary information, customer lists, formulas, and trade secrets. But, in the post-Watergate era, we have come to view openness and transparency in government as a fundamental public policy, essential to keep government accountable, and to foster public confidence in government. In New York, this fundamental public policy is expressed in the form of the Freedom of Information Law,[17] which makes most government records available for public inspection and copying, and the Open Meetings Law,[18] which makes most government meetings open to the public.

GML § 805-a provides, in pertinent part, that no municipal officer or employee shall disclose confidential information acquired by him or her in the course of his official duties or use such information to further his or her personal interests. However, the term "confidential information" is neither defined in the General Municipal Law, nor in a similar provision of the Public Officer's Law applicable to state employees.[19] Moreover, there appears to be no consensus as to the meaning of "confidential information" as that term is used by Article 18.

In 2000, the Attorney General was asked whether a municipality has statutory authority under GML § 806 to adopt a code of ethics that prohibits members of the legislative body from disclosing matters discussed in executive session, and whether such a prohibition would be consistent with the Open Meetings Law and the Freedom of Information Law. The Attorney General opined that a local municipality has the statutory authority to prohibit members of its legislative body from disclosing matters discussed in executive session, and that such a prohibition would be consistent with the Freedom of Information Law and the Open Meetings Law.[20] The Attorney General noted that "any such restriction on speech would, of course, be subject to further state and federal constitutional requirements."

The Attorney General reasoned that the purpose of an executive session is to permit members of public bodies to discuss sensitive matters in private, and that the matters that are permitted to be discussed in executive session are matters which, if disclosed, could jeopardize sensitive negotiations, personal privacy, law enforcement and public safety.[21] The Attorney General cited a 1997 decision of the Third Department,[22] finding that disclosure of matters discussed in executive session would defeat the parallel legislative purposes of the Open Meetings Law and the Freedom of Information Law, and effectively applying the statutory grounds for meeting in executive session as exceptions to disclosure under the Freedom of Information Law. The Attorney General concluded that the GML § 806(1)(a) authorization to adopt municipal codes of ethics that prohibit disclosure of information is consistent with and reinforces the fact that records of discussions properly taking place in executive session may be withheld from public disclosure.

In a series of staff advisory opinions, the Executive Director of the Department of State Committee on Open Government reached a different conclusion. In response to a 2007 inquiry from a local school board member who received a memo from the school district citing GML § 805-a and Board Policy to prohibit the disclosure of information acquired in executive session, the Executive Director opined that:

> …[I]n most instances, even when records may be withheld under the Freedom of Information Law or when

> a public body… may conduct an executive session, there is no obligation to do so. The only instances, in my view, in which members of a public body are prohibited from disclosing information would involve matters that are indeed confidential. When a public body has the discretionary authority to disclose records or to discuss a matter in public or in private, I do not believe that the matter can properly be characterized as "confidential."[23]

Citing a 1986 decision by the New York Court of Appeals,[24] the Executive Director observed that the characterization of records as "confidential" must be based on statutory language that specifically confers or requires confidentiality; and that to confer or require confidentiality, a statute must leave no discretion to an agency (i.e. the agency *must* withhold the records). Because the exemptions from mandatory disclosure set forth in the Freedom of Information Law are permissive (i.e., the agency *may* withhold the records), the Executive Director concluded that the only situations in which an agency must withhold records would involve instances in which a statute other than the Freedom of Information Law prohibits disclosure. The Executive Director concluded that "[s]ince a public body may choose to conduct an executive session or discuss an issue in public, information expressed during an executive session is not 'confidential.'"

Under this view, each request for disclosure must be made by a municipal information officer on a case-by-case basis, with each discretionary denial of access subject to Article 78 review, and with the burden upon the municipality to establish that its discretion has not been abused.[25]

While there appears to be no consensus as to the meaning of "confidential information" as that term is used by Article 18 in regulating the conduct of municipal officers and employees, government information is presumptively subject to public disclosure.[26]

The Appellate Divisions of the New York Supreme Court recently promulgated joint Rules of Professional Conduct[27] in which they adopted a definition of "confidential government information" for the purpose of regulating the professional conduct of current and former government attorneys.[28] Unlike the meaning given to the term "confidential information" by the Executive Director for purposes of the Freedom of Information Law, the newly promulgated Rules of Professional Conduct require current and former government attorneys to refrain from disclosing government information that a municipality "may" withhold from public disclosure unless it is otherwise available to the public.

Rule 1.11 of the Rules of Professional Conduct applicable to current and former government attorneys defines "confidential government information" as "information that has been obtained under governmental authority and that, at the time the Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public." It should be noted that the obligation of confidentiality applicable to current and former government attorneys is different from that corresponding obligation owed by private sector attorneys.[29]

Rigid Regulation

In a section of Article 18 notable for its clarity, the statute prohibits municipal officers and employees from having prohibited interests in municipal contracts. Subject to certain statutory exceptions,[30] GML § 801 is violated if three elements are established: (1) the existence of a contract with the municipality, (2) a benefit accruing to an officer or employee of the municipality as a result of the contract, and (3) the power or duty of the officer or employee, either individually or as a member of a board, whether exercised or not, to (a) negotiate, prepare, authorize or approve the contract, (b) authorize or approve payment under the contract, or audit bills or claims under the contract, or (c) appoint an officer or employee to perform any of these functions. The term "contract" is broadly defined by Article 18.[31] A contract willfully made in violation of this section is void.[32] A willful and knowing violation of the section is a misdemeanor.[33]

This prohibition against self-dealing has the salutary effect of promoting the reality and appearance of integrity in government. However, logic and experience indicate that it may sometimes further the public interest for a municipality to make a contract with an interested municipal officer or employee. This may be the case where the contract is justified by an actual emergency or is awarded to the lowest of sealed competitive bids received after public notice. But Article 18 prohibits such contracts notwithstanding the existence of an emergency or the use of competitive bidding, even where the interested officer or employee recuses himself or herself from the discussions, deliberations and vote on the matter and from negotiating, preparing, authorizing or approving the contract, authorizing or approving payment under the contract, auditing bills or claims under the contract, or appointing an officer or employee to perform any of these functions.

Gaps in Coverage

Despite the expansive coverage of GML § 801, courts have, in some cases, been compelled to look beyond Article 18 to find common law ethics viola-

tions, and to nullify municipal actions, even where no statutory violations were found.[34] In these cases, the courts nullified municipal actions that were based on votes cast by officials who had private interests in the matters. The matters did not involve contracts with the municipalities and, therefore, no violation of GML § 801 occurred. Nevertheless, the courts nullified the actions based on the perceived conflicts of interest.[35] Quoting the "soaring rhetoric" of Chief Judge Cardozo, the Second Department stated that "a trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."[36] A new statewide ethics law could expand the coverage of GML § 801 to require that municipal officers and employees recuse themselves in all matters involving the private interest of themselves, their family members, or those with whom they have business or financial relationships.

Among the activities not regulated by Article 18 are post-employment activities, dual office holding and outside employment.

Many municipalities have utilized the authority granted by GML § 806 to enact local ethics codes that include "revolving door" restrictions on post-employment activities by former municipal officers and employees. Typically, municipalities that choose to regulate post-employment activities impose a permanent ban on handling matters on behalf of a private sector employer that the officer or employee handled in any substantial way in his or her official capacity, and a temporary ban (usually of one or two year duration) on appearances by retired officers or employees before their former agencies, departments or boards or, in some cases, before any agency, department or board of the municipality. This latter ban is designed to avoid the perception that a retired officer or employee will receive preferential treatment from his or her former colleagues. A new state municipal ethics law could establish a uniform baseline for the regulation of post-employment activities.

Among the most common requests for ethics advice to be received by local boards of ethics are inquiries from members of the municipal workforce as to whether they may accept offers of outside employment. Similarly, local ethics boards often receive inquiries from municipal officials who wish to hold more than one public office. Article 18 provides no guidance in these "two hat" cases. Rather, the controlling legal principle was announced by the New York Court of Appeals in 1874.[37] Generally, in the absence of a constitutional or statutory prohibition, an individual may hold two public offices, and a public employee may hold a position of outside employment, provided the two positions are not inherently incompatible.[38] To determine whether two positions are inherently incompatible, it is necessary to compare their duties. The classic example of incompatible positions is those of chief financial officer and auditor. Stated differently, you cannot be your own boss.

Even where a municipal officer or employee holds two positions that are compatible, the officer or employee may still be confronted from time to time by conflicts of interest. Of course, in such cases the officer or employee should disclose the conflicts (and in the case of a contract or agreement with the municipality, must disclose his or her interest in the contract pursuant to Article 18) [39] and, by common law, must recuse himself or herself.[40] A new state municipal ethics law could codify the common law principles regulating dual office holding and outside employment.

Onerous Annual Disclosure Requirement

The New York State Ethics in Government Act of 1987 (the "Ethics Act") codified as GML §§ 810-813, imposed annual financial reporting requirements on municipalities having populations of 50,000 or more, and established a Temporary State Commission on Local Government Ethics (the "Commission") to interpret and administer the annual financial reporting requirements. The Ethics Act specified the form and content of the annual financial disclosure form that municipalities would be required to use if they did not adopt their own consistent financial disclosure laws by January 1, 1991.

In a 1991 article, the former Executive Director of the Commission, Professor Mark Davies, criticized the form of financial disclosure set forth in the Ethics Act: "The financial disclosure form set out in the [Ethics Act] is in many instances virtually unintelligible and is far too invasive of the rights of officials in most municipalities. In some municipalities that form may indeed chill the willingness of good people to serve in local government."[41]

The Ethics Act gave local municipalities the option of adopting their own financial disclosure laws to be administered locally, rather than submitting to regulation by the State under Article 18. However, it did not specify what different form of annual disclosure by local officers and employees, if any, would meet the requirements of the State Act. In enacting their own financial disclosure laws, many municipalities adopted the form of financial disclosure set forth in the Ethics Act.

The Commission reviewed an alternate form of annual disclosure submitted by a local municipality, concluded that it would meet the minimum requirements of the Ethics Act if the form were amended in certain respects, and approved the alternate form as amended.[42]

Ideally, municipal officers and employees should only be required to disclose information that could reveal a potential significant violation of their obligations under Article 18 or their respective local codes of ethics.[43] The onerous, invasive form of annual disclosure set forth in Article 18 is widely and justifiably disdained.

Ineffective Administration

Other than authorizing local municipalities to establish boards of ethics, Article 18 provides no framework for the effective administration of a government ethics program. Worse yet, Article 18 undermines the independence of a local ethics board by providing that a majority of its members (rather than all of them) shall not otherwise be officers or employees of the municipality, and by providing that board members shall serve at the pleasure of the appointing authority.[44] Local municipalities should exercise the authority granted to them under Article 2 of the Municipal Home Rule Law to establish ethics boards consisting entirely of persons who are not officers or employees of the municipality, and who serve for fixed staggered terms.

A new state ethics law could promote the effectiveness of local government ethics programs by providing for the establishment of independent local boards of ethics. It could foster confidence in government by requiring that local ethics boards be bi-partisan in their membership. A new state ethics law could make real the promise of "known standards of ethical conduct as a guide for public officers"[45] by establishing a baseline requirement of annual ethics training for all municipal officers and employees.[46]

Local legislators face great challenges, and often great resistance, when attempting to enact ethics legislation. A new statewide ethics law is sorely needed.

Endnotes

1. *See* N.Y. Gen. Mun. Law § 800(4).
2. *See* N.Y. L. 1964, c. 946, § 1.
3. *See* Mark Davies, *Enacting a Local Ethics Law—Part I: Code of Ethics*, *Municipal Lawyer*, Summer 2007, Vol. 21, No. 3, n. 3.
4. *See* Davies, *Enacting a Local Ethics Law—Part I: Code of Ethics*, pp. 4-8.
5. *See* 26 U.S.C. § 274 (Disallowance of certain entertainment, etc., expenses).
6. *See* N.Y. Penal Law, art. 200 (Bribery involving public servants and related offenses), *et seq.*
7. *Id.*
8. *Id.*
9. *See* O.G.E. Inf. Adv. Op. 87 x 13 (Oct. 23, 1987).
10. *See People v. Moore*, 85 Misc.2d 4, 377 N.Y.S.2d 1005 (Fulton County Ct. 1975).
11. *See Merrin v. Twn. Bd. of Kirkwood*, 48 A.D.2d 992, 369 N.Y.S.2d 878 (3d Dep't 1975).
12. *See* Mark Davies, *Keeping the Faith: A Model Local Ethics Law—Content and Commentary*, 21 FORDHAM URB. L. R. 61-126 (1993).
13. *See* N.Y. Legis. Law § 1-m (prohibition of gifts).
14. *See* Comm. on Public Integrity Adv. Op. No. 08-01: "'Disqualified source' is any individual who, on his or her own behalf or on behalf of non-governmental entity, or a non-governmental entity on its own behalf which: (1) is regulated by, or regularly negotiates with, appears before other than in ministerial matter, does business with, seeks to contract with or has contracts with state agency with which state officer or employee is employed or affiliated; or (2) is required to be listed on statement of registration as required by Legislative Law, or is spouse or unemancipated minor child of individual who is required to be listed on statement of registration; or (3) is not required to be listed on statement of registration as required by Legislative Law, and lobbies or attempts to influence action or positions on legislation or rules, regulation or rate-making before state agency with which state officer or employee is employed or affiliated; or (4) is involved in litigation, adverse to state, with state agency with which state officer or employee is employed or affiliated, and no final order has been issued; or (5) has received or applied for funds from state agency with which state officer or employee is employed or affiliated, including participation in bid on pending contract award, at any time during previous year up to and including date of proposed or actual receipt of gift; or (6) seeks to contract with or has contracts with state agency other than agency with which state officer or employee is employed or affiliated when officer or employee's agency is to receive benefits of contract.… [I]f individual or entity lobbies a State agency, the individual or entity is a disqualified source, without regard to the amount the individual or entity expends, receives or incurs."
15. *See* N.Y. Legis. Law § 1-c (definitions).
16. N.Y. Gen. Mun. Law § 806-1(a) provides, in pertinent part, that "the governing body of each county, city, town, village, school district and fire district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them.… Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited.…"
17. *See* N.Y. Pub. Off. Law, art. 6 (Freedom of Information Law).
18. *See* N.Y. Pub. Off. Law, art. 7 (Open Meetings Law).
19. *See* N.Y. Pub. Off. Law § 74 (Code of Ethics).
20. *See* 2000 N.Y. Op. (Inf.) Att'y Gen. 1009.
21. *See* Pub. Off. Law § 105 (Conduct of executive sessions).
22. *See Wm. J. Kline & Sons v. County of Hamilton*, 235 A.D.2d 44, 663 N.Y.S.2d 339 (3d Dep't 1997).
23. *See* N.Y. Dept. of State, Comm. Open Gov't, FOIL-AO-16799 (Sept. 20, 2007).
24. *See Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 567 (1986).
25. *See Washington Post Co. v. New York State Ins. Dep't*, 61 N.Y.2d 557 (1984).
26. *Id.*
27. *See* 22 N.Y.C.R.R. Part 1200 (Rules of Professional Conduct), *et seq.*
28. *See* N.Y. RULES OF PROF'L CONDUCT R. 1.11 (2009).
29. *See* N.Y. RULES OF PROF'L CONDUCT R. 1.6 (2009); for private sector attorneys, "confidential information" means

"information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential."

30. *See* N.Y. Gen. Mun. Law §§ 801, 802.
31. N.Y. Gen. Mun. Law § 800(2) states that the term "'contract' means any claim, account or demand against or agreement with a municipality, express or implied, and shall include the designation of a depository of public funds and the designation of a newspaper… for the publication of any notice, resolution, ordinance, or other proceeding where such publication is required or authorized by law."
32. *See* N.Y. Gen. Mun. Law § 804.
33. *See* N.Y. Gen. Mun. Law § 805.
34. *See Tuxedo Conservation & Taxpayers Assn. v. Town Bd.*, 69 A.D.2d 320, 418 N.Y.S. 2d 638 (2d Dep't 1979); *Zagoreos et al. v. Conklin*, 109 A.D.2d 281, 491 N.Y.S2d 358 (2d Dep't 1985).
35. *Id.*
36. *See, e.g., Tuxedo*, 69 A.D.2d at 324.
37. *See People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874).
38. *Id. See also* 2006 N.Y. Op. (Inf.) Att'y Gen. 5.
39. N.Y. Gen. Mun. Law § 803(1) states that "[a]ny municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body."
40. *See Tuxedo* and *Zagoreos*, *supra* note 34.
41. *See* Mark Davies, *Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, 11 PACE L. REV. 243, 263 (1991).
42. The alternate form of annual disclosure approved by the Temporary State Commission can be found at Davies, *Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, pp. 269-272.
43. *See* Davies, *Enacting a Local Ethics Law—Part I: Code of Ethics*, p. 8.
44. *See* N.Y. Gen. Mun. Law § 808.
45. *See* N.Y. L. 1964, c. 946, § 1.
46. Effective 2007, the members of local zoning and planning Boards are required to complete a training requirement in order to more effectively carry out their duties. Members who fail to comply are ineligible for reappointment to their respective boards. *See* N.Y. Town Law §§ 267, 271; N.Y. Village Law §§ 7-712, 7-718.

Steven G. Leventhal is an attorney and certified public accountant. He is a partner in the Roslyn law firm of Leventhal and Sliney, LLP. Steve is the former chair of the Nassau County Board of Ethics. He currently serves as Village Attorney for the Village of Muttontown, and as counsel to several municipal boards. SLeventhal@ls-llp.com.